



REPUBLIC OF KENYA



KENYA LAW
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**CKM v SMK (Civil Suit E036 of 2022)
[2025] KEHC 10934 (KLR) (Family) (8 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10934 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**FAMILY
CIVIL SUIT E036 OF 2022**

CJ KENDAGOR, J

JULY 8, 2025

BETWEEN

CKM PLAINTIFF

AND

SMK DEFENDANT

JUDGMENT

1. The Plaintiff and the Defendant got married on 12th June, 2010 and their union was thereafter blessed with two issues. However, the marriage did not work and it was dissolved by the Court on 6th August, 2021.
2. The Plaintiff brought the instant application (O.S) dated 7th June, 2022, seeking the following orders;
 1. That this Honourable Court be pleased to declare that the movable and immovable properties listed here below belong to the [Plaintiff] as indicated.
 - a. Kileleshwa home situate on Suguta road-Citi sea breeze apartment D5- [Plaintiff] is entitled to 50% thereof.
 - b. Apartment number 8 Block 10 Waybridge Gardens Mlolongo- [Plaintiff] is entitled to 50% thereof.
 - c. Motor Vehicle KCK xxxA- Toyota Vitz- It is an absolute property of the [Plaintiff].
 - d. Motor Vehicle KCZ xxxP- [Plaintiff] is entitled to 50% thereof.
 2. That a temporary injunction do issue restraining the Defendant, his servants and/or agents, or developers from alienating, transferring, selling, disposing, charging, mortgaging or in any way encumbering the properties listed in prayer 1 above.



3. That an order of injunction do issue directing the Defendant, to immediately vacate and allow the [Plaintiff] and the children of the marriage to exclusively occupy and use the matrimonial home situate at Kileleshwa on Suguta road- Citi sea breeze apartment D5, Nairobi.
4. Spent.
5. That in the alternative to prayers 3 and 4 above, both properties matrimonial home situate at Kileleshwa on Suguta Road-Citi Sea Breeze Apartment D5, Nairobi and Apartment Number 8 Block 10 at Waybridge Gardens Mlolongo be rented out and all proceeds to go to an account for paying school fees for the children.
6. That this Honourable court be pleased to make such further orders as the interests of justice may require.
7. That the costs of the Summons are provided for.

Plaintiff's Case

3. The grounds of the O.S were enlisted on its face and supported by an affidavit sworn by the Plaintiff and dated 7th June, 2022. She stated that the properties listed in prayer 1 were acquired and/or developed during the subsistence of the marriage with joint efforts, direct and indirect contributions of both parties. She claimed that the property situated at Kileleshwa is their matrimonial home and that the Defendant constructively kicked her out of the said property. She stated that the Defendant lives on the matrimonial home while she has rented an apartment where she lives with the children.
4. She argued that she desires to go back to the matrimonial home and the Defendant ought to find another place to live. She stated that the children are used to the environment where they have grown up and that their school is nearby. For these reasons, she argued that the Defendant should leave the matrimonial home for her and the children. She also stated that she is using the Motor vehicle KCK xxxA to carry the children and that if the Defendant takes the same away, they will be totally stranded.
5. The Plaintiff stated that she made direct and indirect contribution to the acquisition of the said properties in the following ways; prepared meals for the family, took care of the home and the children, employed and trained nannies to take care of the children while they both went to work. She also claimed that she contributed 50% of family expense budget monthly for shopping and other household expenses and provided the Defendant with companionship and support. She stated that throughout their coverture she had well-paying jobs and she utilized all her income in developing and acquiring the said properties.
6. She also claimed that she bought off a car loan the Defendant was having so that he could take mortgage with his employer, add to her savings, and that way they acquired the Mlolongo property. She also stated that she gave up her share of rent from the Mlolongo house to fund the joint accounts for the children so that they could save for school fees. She also claimed that she provided a comprehensive medical cover for the family through her employers since the Defendant's employer had no medical cover. Lastly, she stated that she single-handedly sourced and bought furniture and other household items.
7. She also filed a supplementary affidavit dated 10th January, 2023, in which she stated that she gave the Defendant Kshs.100,000/= in cash to top up and buy the M/V KCZ xxxP. She also stated that she took a loan of Kshs.200,000/= and paid to his account so that he could clear his outstanding loan and enable him qualify for the mortgage at the Bank - with which he purchased the Mlolongo property. She also stated that she used her shares at LSK Sacco to be his guarantor and acquire a loan from LSK



Sacco, with which her purchased the M/V KCZ xxxP. She also stated that they had a joint investment project with him the Defendant called BIZROCK to which she contributed Kshs.200,000/= and from whence he exclusively receives dividends and has never remitted any proceeds to her.

Defendant's Case

8. The Defendant filed a Replying affidavit sworn by him and dated 30th August, 2022. He claimed that the Plaintiff is not entitled to the prayers sought in the application. He stated that the Plaintiff did not contribute in any way to the acquisition of the properties and that he laboured alone and independently to acquire the various properties. He stated that the Plaintiff was always gainfully employed, most of the times earning considerably big salaries, but she did not support him in raising the family nor taking care of any expenses.
9. He stated that he acquired Mlolongo House himself without the Plaintiff's contribution. He stated that its purchase price was Kshs.3,100,000/=, he paid the requisite 10% deposit himself and acquired a loan of Kshs.3,000,000/= to cover the balance. He stated that in total he spent Kshs.4,511,895.54/= in repayment of the principal loan advanced and the interest. He stated that the Plaintiff did not assist him to settle the loan. In addition, he stated that he acquired the Kileleshwa property at the cost of Kshs.14,900,000/= and that the Plaintiff did not pay a dime towards the said purchase. He itemized the payments he made towards the acquisition of the said property, totaling to Kshs. 14.9 million.
10. Concerning M/V Registration No KCZ xxxP, the Plaintiff stated that the same does not constitute matrimonial property. He stated that he purchased the said M/V solely at Kshs.1,800,000/= and without the Plaintiff's assistance. He stated that he paid a deposit of Kshs.900,000/= and borrowed Kshs.900,000/= from the LSK Sacco to clear the balance. He also itemized the payments he made towards the acquisition of the same M/V.
11. With regards to M/V Registration No KCK xxxA, the Defendant stated that he personally and individually acquired the said M/V at Kshs.670,000/= without the contribution of the Plaintiff. He stated that he paid a deposit of Kshs.500,000/= and later paid Kshs.170,000/=. He attached a copy of the sale agreement and the logbook. He also claimed that he single-handedly paid for all the furniture and fittings in their house. He itemized some of the purchases he made totaling to Kshs.1,238,265/=. He maintained that the Plaintiff did not buy any furniture for the house.
12. Lastly, the Defendant claimed that he has been responsible for the health care for the 2 minors and also for the Plaintiff. He stated that over and above keeping a National Health Insurance Cover for the minors, he has also been the one paying for their outpatient medical attention. He set out a number of instances he catered for the medical bills, the receipts for payments, and evidence of the NHIF cover.
13. The Defendant also filed a further affidavit sworn by him and dated 7th March, 2023, in which he denied the Plaintiff's claims. He stated that the Plaintiff did not deposit into his account Kshs.200,000/= as alleged and that she did not attach any evidence of the alleged deposit. He also stated that the Plaintiff did not forfeit any rental income from the Mlolongo house as alleged. Instead, he stated that he used the rent from the Mlolongo house and even added other funds to pay rent for the Kileleshwa rented house for the 3 years and 7 months that they stayed there.
14. In addition, the Defendant agreed that the Plaintiff lent him Kshs.100,000/= when he purchased M/V registration No KCZ xxxP. He however stated that he subsequently paid back the amount to the Plaintiff on 23rd December, 2020. He also agreed that the Plaintiff has also guaranteed a portion of the loan he had taken from the LSK Sacco. He however stated that he had the Plaintiff discharged from the guarantee three months later. Lastly, he stated that the provision of medical insurance cover was



never a one-party affair as the Plaintiff want to suggest. He claimed that he also provided medical cover for the family for the entire period of the marriage.

The Plaintiff's Written Submissions

15. The Plaintiff submitted that she deserves a 50% of the said properties as prayed in the application. She argued that all the 4 properties are matrimonial properties on grounds that they were acquired together by the two during the currency of their marriage. She argued that they both made monetary and non-monetary contributions towards their acquisition and are thus now entitled to equal distribution of the said properties. She argued that she made direct and indirect contribution to the acquisition of the said properties. She submitted that equity demands that a spouse should not be denied a share merely because they cannot document direct financial contributions and significant indirect contributions.
16. She argued that the Kileleshwa property and the furniture therein constitute matrimonial property, because it was their principal matrimonial home. She also argued that the Mlonongo property is a matrimonial property because it is jointly registered and should be distributed equally 50-50. She also argued that the two motor vehicles constitute matrimonial property under Section 6. She submitted that Courts have treated family vehicles as matrimonial assets when a spouse has contributed to their upkeep. She argued that she contributed by routinely paying for fuel, maintenance, and insurance, and that she regularly used the vehicles to transport the children and manage family errands.

The Defendant's Written Submissions

17. The Defendant submitted that the Plaintiff does not deserve the orders prayed in the Application. He argued that the Plaintiff is not entitled to claim a share in the Kileleshwa and Mlolongo properties on grounds that she did not contribute to their acquisition. He argued that although the Mlolongo property is registered in their joint names, such registration does not confer any proprietary rights to the Plaintiff. He stated that the Plaintiff was to hold it in trust for him owing to the then existing relationship. He argued that there is a resulting trust operating against the Plaintiff and in his favour, for he is the one who provided the money for the purchase. He submitted that he has provided enough evidence to rebut the presumption of equal contribution.
18. He argued that although the Kileleshwa property is yet to be registered in his name, he is the beneficial owner of the property having paid for it fully. He also argued that he paid for property improvements when the owners of the units agreed to finance improvements to the property. He also stated that there was no agreement whatsoever between him and the Plaintiff in whose name the property would be registered. He also argued that the two M/Vs do not constitute matrimonial property because he solely paid for their acquisition without the Plaintiff's contribution and that they are registered in his name.
19. He argued that the Plaintiff did not tell the Court why she is entitled to 50% and not 10% or 20% or 60% or 80% or 100%. He submitted that the Plaintiff ought to have explained the formula that would entitle her to 50% share or even any percentage at all. He argued that his evidence is uncontroverted and the Plaintiff has not supplied any evidence to support her assertions. He submitted that the issue of equality of parties during and after marriage as provided under Article 45 (3) of *the Constitution* does not mean 50:50 sharing of matrimonial properties by the parties. He argued that equality in division of matrimonial property requires first, judicial assessment of what each party has brought to the table before any proper mathematical figures can be determined.

Issues for Determination

20. Having carefully considered the O.S, the various affidavits, and the submissions by the parties, the following are the issues for determination;



- a. What was the parties' respective contribution to the acquisition of Kileleshwa House on Suguta Road Apartment D5?
 - b. What was the parties' respective contribution to the acquisition of Mlolongo House- Flat 8 Block 10 on LR No 13302/14?
 - c. Whether the Plaintiff has beneficial interest on M/V Reg no KCZ xxxP.
 - d. What was the parties' respective contribution to the acquisition of M/V Registration no KCK xxxA.
21. The parties appeared before me and gave oral testimonies. Before I determine the issues I have just identified above, I shall first summarize each parties' oral testimonies in support of their respective positions.
 22. PW1 was the Plaintiff. She is a Human Resource practitioner currently working with the Kenya Redcross Society of Kenya. She relied on her affidavit sworn on 7th June, 2022 and the supplementary affidavit dated 10th January, 2023. She also produced several exhibits to support her case.
 23. Concerning the Mlolongo Property, she stated that she took a loan so that the Defendant could use the funds to pay off a M/V loan he was servicing to enable him take a mortgage for the Mlolongo house. She said she gave Kshs.200,000/= towards its acquisition. On cross-examination, she stated that she did not have any evidence that she took the loan. She stated that she did not dispute that the Defendant took a loan for the Mlolongo property. She told the Court that she contributed to its purchase, but admitted that she did not have physical evidence. She stated that she gave the Defendant moral support as he invested in these properties as well as financial support and taking care of the children.
 24. Concerning the Kileleshwa property, she stated that it cost Kshs.14,900,000/=. She stated the payments were mostly in cash and that she used to withdraw from the bank and give the Defendant money to go and pay. She however admitted that she did not have this evidence. She stated that before separation they lived on the Kileleshwa property. She stated that the Mlolongo Property was fully acquired by November, 2013 and the Kileleshwa property was finalized by March, 2018. She admitted that the Defendant's law practice went down in 2018 and that the Mlolongo and Kileleshwa properties had already been acquired by the time the Defendant's law practice started facing the challenges in August 2018.
 25. She stated that her employer gave her a medical cover that covered the entire family. She admitted that Defendant also maintained NHIF cover under which she was a beneficiary. Concerning the Subaru Forester car, she stated that she deposited Kshs.100,000/= to the Defendant's Mpesa as a contribution to its purchase. She admitted that she did not pay the money to the dealer and that it was the Defendant who made the payment. Although she admitted that the Defendant later sent her Kshs.100,000/= to her Mpesa, she insisted that the money was not a refund but for house expenses.
 26. With regards to the furniture, she stated that they looked for the furniture together. She however admitted that it was the Defendant who made the payments. Concerning the KCK xxxA Vitz, she stated that the payments were done jointly but that it was the Defendant who made the payments. She insisted that she is asking for 50% of the properties on grounds that they contributed equally both financially and in other means. She stated that she had bank statements showing withdrawals.
 27. DW1 was the Defendant. He relied on his replying affidavit dated 30th August, 2022, alongside its 253 annexures. He also sought to rely on his further affidavit sworn on 7th March, 2023 and its annexures. He stated that the Plaintiff stood as a guarantor for Kshs.900,000/= that he was borrowing to buy the



Subaru Forester car. He stated that he discharged her from the guarantee three months later after the Plaintiff said she no longer wanted to be a guarantor. He stated that no money was recovered from her for the loan and that he paid for it fully.

28. Concerning the Mlolongo property, he stated that he acquired it single handedly because he paid Kshs.310,000/= deposit from his account and that he borrowed the rest from the bank. He stated that the Plaintiff did not pay Kshs.200,000/= to raise deposit towards its acquisition. He stated that he included her name in the title documents because they were just newly married and there was trust then. He stated that they lived on this property from November, 2010 to March, 2014. With regards to the Kileleshwa property, he stated that they moved to the house around November, 2017. He stated that the Plaintiff did not contribute to its acquisition. He stated that they have never agreed on the issue of registration.
29. Concerning the Subaru Forester car, he stated that the Plaintiff did not contribute to its purchase. He stated that he asked for a loan of Kshs. 100,000/= from the Plaintiff because he was short of what he needed to purchase the car, which was going for Kshs. 1.8 million. He stated that the money was to be paid back and that he later refunded her the same. He stated that he had single-handedly took care of all family finances and had only requested the Plaintiff to contribute when his law practice faced challenges and he was unable to handle them on his own. He stated that it was only on that occasion when they drew a family budget, but he admitted in cross-examination that he did not have a copy of the family budget in Court.

What is the parties’ respective contribution to the acquisition of Kileleshwa house on Suguta Road Apartment D5?

30. As a precursor, the Court must first determine whether the Kileleshwa house is a matrimonial property within the meaning of the *Matrimonial Property Act*, No. 49 of 2013. Section 6 of the Act defined ‘matrimonial property’ as follows;
 6. Meaning of matrimonial property:
 - (1) For the purposes of this Act, matrimonial property means—
 - (a) the matrimonial home or homes;
 - (b) household goods and effects in the matrimonial home or homes; or
 - (c) any other immovable and movable property jointly owned and acquired during the subsistence of the marriage.
31. In addition, of Section 2 the Matrimonial Properties Act defines a ‘matrimonial home’ as follows;

“ any property that is owned or leased by one or both spouses and occupied or utilized by the spouses as their family home, and includes any other attached property”.
32. I shall now turn to the evidence placed before me, analyze the same and determine whether the Kileleshwa house was a matrimonial property. During their testimony in Court, the parties told the Court that they lived on the said house prior to their separation and divorce. The Plaintiff testified that they lived on the property prior to their separation. The Defendant corroborated this and told the Court that they moved to the house around November, 2017. Based on these testimonies, this Court finds no difficulties in finding that the said property was the parties’ matrimonial home and hence a matrimonial property within the meaning of the Act.



33. Should the Property be shared between the parties herein? The question on how matrimonial property is to be shared has now been settled by the law and the superior Courts. The position is that the distribution depends on the spouses' individual contributions in the acquisition of the properties. Section 7 of the Act provides as follows;

7. Ownership of matrimonial property:

Subject to section 6(3), ownership of matrimonial property vests in the spouses according to the contribution of either spouse towards its acquisition, and shall be divided between the spouses if they divorce or their marriage is otherwise dissolved.

34. I shall now turn to the evidence and determine each party's contribution to the acquisition of the said property. The Defendant claimed that he paid for the property on his own and that the Plaintiff did not contribute a dime towards its purchase. He produced receipts to show that he made payments to the developer, Tofina Rom Builders Ltd. The receipts show that he paid the following amounts on the following dates; 14/03/2018-100,000/=; 08/02/2018-100,000/=; 15/01/2018-100,000/=; 21/8/2017-100,000/=; 31/07/2017-200,000/=; 11/07/2017-100,000/=; 13/06/2017-500,000/=; 4/05/2017-300,000/=; 28/07/2016-664,000/=; 28/07/2016-700; 25/07/2016-400,000/=.

35. Others were 13/7/2016-300,000/=; 29/06/2016-300,000/=; 22/6/2016-400,000/=; 31/5/2016-200,000/=; 25/05/2016-250,000/=; 13/05/2016-200,000/=; 5/5/2016-500,000/=; 27/04/2016-300,000/=; 12/4/2016-240,000/=; 22/03/2016-150,000/=; 16/3/2016-400,000/=; 3/3/2016-50,000/=; 22/2/2016-200,000/=; 15/2/2016-100,000/=; 9/2/2016-200,000/=; 28/1/2026-120,000/=; 5/01/2016-200,000/=; 29/12/2015-150,000/=; 22/12/2015-50,000/=; 21/12/2015-100,000/=; 15/12/2015-30,000/=; 11/12/2015-50,000/=; 04/11/2015-40,000/=; 16/11/2015-100,000/=; 4/11/2015-300,000/=; 02/11/2015-330,000/=; 21/07/2015-1,000,000/=; 5/1/2014-550,000/=; 21/11/2014-800,000/=; 28/7/2014-500,000/=; 21/8/2014-250,000/=; 20/6/2014-500,000/=; 2/4/2014-500,000/=; 7/2/2014-300,000/=; 8/1/14-700,000/=; 7/11/2013-500,000/=; 25/11/2013-500,000/=; and 14/10/2013-1,000,000/=. The total of these is Kshs.14, 874,000/=.

36. I have looked at the said receipts. They indicate that the payments were made by the Defendant. Each of the receipt was issued by the developer Tofina Rom Builders and has a corresponding bank deposit slip from the Bank- the NIC Bank. The deposit slips indicate that it was the Defendant who made the deposits.

37. The Defendant also stated that he has single handedly met the cost for the improvements on the said property. Some of improvements on the property include renovations on paintworks, improvement of the basement and ground floor with a Terrazzo floor, and installation of a steel buffer and glass facade around the staircase.

38. He produced receipts and bank deposit slips to show that he paid for the said improvements. The bank deposit slips show that he made the following payments; 5/4/2022-10,000/=; 3/2/2022-20,000/=; 4/1/2022-50,000/=; 3/12/2021-50,000/=; 2/3/2020-10,000/=; 1/2/2020-20,000/=; 4/5/2020-10,000/=; 4/2/2019-20,000/=; 3/8/2019-11,000/=; and 8/10/2018-40,000/=. All the bank deposit slips indicate that it was the Defendant who made the deposits. In my calculation, the cost of the improvements met by the Defendant as per the deposits slips was Kshs.241,000/=.

39. Lastly, the Defendant claimed that he has been single handedly paying the service charge for the property over the years without the help of the Plaintiff. He stated that since they moved into the house in November, 2017, he has paid approximately Kshs.580,000/= for the 4 years and 9



months in form of service charge and renovations. He produced bank deposit slips showing that he has paid the following amounts on the following dates; 3/2/2022-10,500/=; 4/1/2022-10,700/=; 3/12/2021-10,110/=; 5/11/2021-11,470/=; 5/10/2021-12,130/=; 6/9/2021-13,408/=; 4/8/2021-12,450/=; 2/7/2021-11,360/=; 4/5/2021-11,360/=; 1/4/2021-11,360/=; 1/3/2021-11,360/=; 1/2/2021-11,800/=; 4/7/2022-10,590/=; 6/1/2022-10,480/=; 5/5/2022-11,030/=; 5/4/2022-10,000/=; 5/4/2022-10,920/=; 7/3/2022-590/=; 2/3/2022-10,000/=.

40. Others were 3/2/2022-20,000/=; 7/1/2021-10,000/=; 3/12/2020-10,000/=; 2/11/2020-10,000/=; 1/10/2020-10,000/=; 2/9/2020-10,000/=; 4/8/2020-10,000/=; 1/7/2020-10,000/=; 2/6/2020-10,000/=; 4/5/2020-10,000/=; 1/4/2020-10,000/= (Renovation); 1/4/2020-10,000/=; 2/3/2020-10,000/=; 1/2/2020-10,000/=; 3/1/2020-10,000/=; 2/12/2019-10,000/=; 1/8/2019-10,000/=; 1/11/2019-10,000/=; 1/10/2019-10,000/=; 3/9/2019-10,000/=; 2/7/2019-10,000/=; another illegible receipt for 10,000/=; 3/8/2019-10,000/=; 4/10/2018-10,000/=; 2/4/2019-10,000/=; 4/2/2019-10,000/=; 2/3/2019-10,000/=; 14/1/2019-10,000/=; 8/9/2018-20,000/=; 7/8/2018-10,000/=; 4/1/2018-40,000/=; 3/12/2018-10,000/=; 15/5/2018-20,000/= and 4/7/2018-11,820/=.
41. He also stated that he has been paying the water and electricity bills all these time. He produced bank deposit slips showing that he has paid the following amounts on the following dates; 7/1/2021-1,600/=; 3/12/2020-1,800/=; 2/11/2020-1,700/=; 1/10/2020-2,000/=; 2/9/2020-1,800/=; 4/8/2020-1,800/=; 2/7/2020-1,800/=; 2/6/2020-800/=; 4/5/2020-800/=; 1/4/2020-700/=; 11/3/2020-1,910/=; 1/2/2020-1,690/=; 3/1/2020-1,300/=; 2/12/2019-3,050/=; 1/8/2019-1,560/=; 1/11/2019-2,410/=; 5/9/2019-2,020/=; 1/10/2019-1,950/=; Four receipts produced under this claim were illegible.
42. The Plaintiff, on the other hand, stated that the payments were mostly in cash and that she used to withdraw money from the bank and give it to the Defendant money to go and pay. She however admitted that she did not have this evidence to support such claims. She admitted that the Defendant's law practice went down in 2018 and the Kileleshwa property had already been acquired by the time the Defendant's law practice started facing the challenges in August 2018.
43. The Court has looked at the facts surrounding the acquisition and improvements on this property. It has also, as far as possible, enumerated the extent to which each party offered direct financial contribution towards its purchase. While as the Defendant's financial contribution is easily demonstrable, going by the documentary evidence placed before this Court, the Plaintiff's direct financial contribution does not come out, on the face of her evidence. She claimed that she used to withdraw cash from the bank and give it to the Defendant to go and make the payments.
44. It is trite law that he who alleges must prove. In law the burden of proof lies on the party who asserts the existence of a fact or set of facts. Section 107 of the Evidence Act Cap 80, Law of Kenya provides as follows:

“ 107

- (1) Whoever desires any court to give judgment as to any legal or liability dependent on the existence of facts which he asserts must prove that those facts exist.
- (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”



45. I have analyzed the Plaintiff's testimony carefully to ascertain the extent to which she has substantiated her claims. She did not provide evidence of the withdrawals. If she indeed withdrew money for her accounts as alleged, nothing would have been easier for her than showing this Court that she made the alleged withdrawals. With such evidence, the Court would have been at a better place to see the correlation between her withdrawals and the corresponding payments by the Defendant. This is a Court of law and it's guided by evidence. The evidence before this Court shows that the Defendant paid Kshs.14, 874,000/= for the property. The evidence also shows that the Defendant has all along been paying for the service charge and renovations for the said property.

46. However, the Matrimonial Properties Act provides that contribution may be direct monetary contribution or otherwise. The law requires Court to also take into account non-monetary contribution. Section 2 of the Act defines 'contribution' as follows;

“contribution” means monetary and non-monetary contribution and includes-

- (a) domestic work and management of the matrimonial home;
- (b) child care;
- (c) companionship;
- (d) management of family business or property; and
- (e) farm work;

47. The Plaintiff told the Court that she gave the Defendant moral support as he invested in these properties and took care of the children. She stated that she prepared meals for the family, took care of the home, trained nannies to take care of the children while they both went to work, and provided the Defendant with companionship. In my view, this forms non-monetary contribution which ought to be taken into account.

48. What percentage then should go to the respective parties? The Plaintiff sought 50% of the property, while the Defendant claimed that she does not deserve a share on the said property. In resolving this issue, I shall find company in the authorities of superior Courts in which they have given guidance on similar cases.

49. In Joseph Ombogi Ogentoto Vs Martha Bosibori Ogentoto [2023]e KLR, the Supreme Court stated inter alia as follows:-

“In the event that a marriage breaks down, the function of any court is to make a fair and equitable division of the acquired matrimonial property guided by the provisions of Article 45(3) of *the Constitution*. To hold that Article 45(3) has the meaning of declaring that property should be automatically shared at the ratio of 50:50 would bring huge difficulties within marriages and Tuiyott, J (as he then was) has explained why above. Noting the changing times and the norms in our society now, such a finding would encourage some parties to only enter into marriages, comfortably subsist in the marriage without making any monetary or non- monetary contribution, proceed to have the marriage dissolved then wait to be automatically given 50% of the marital property. That could not have been the intention of our law on the subject.”



50. Similarly, the Court in *VJC v BSW* (Matrimonial Cause E002 of 2022) [2024] KEHC 688 (KLR) emphasized the need for the respective spouses to prove their contribution to the acquisition of matrimonial property and held as follows;
25. There is therefore no longer any room in our laws for the conduct commonly referred to as “gold-digging” where spouses carefully head-hunt wealthy suitors and lead them into sham marriages without the slightest intention of building the marriage into a permanent institution but with the sole aim of subsequently “rocking” it from within, causing it to collapse and in the end hoping to walk away with a fortune.
51. In *TJS v NRS* (Civil Case 69 of 2019) [2022] KEHC 13401 (KLR), the Court faced a similar question to the instant dispute and observed as follows;
12. The respondent testified that she was entitled to 50% of the property LR No 195/III in Karen. It is notable that the property is 2.2 acres and had a 4 bedroomed main house when the respondent joined the applicant to begin living there. They constructed a 2 bedroomed cottage in which they stayed. There was another cottage in which the applicant’s father stays. The respondent stated that she spent Kshs 8,000,000/= to build an extension to their cottage. She did not show she actually spent the money, and did not say where it came from. However, at the time of the extension the couple operated a joint account from which monies came to ran the family and their developments. Each of them worked and had an income. I consider that contribution may be monetary and may also be non-monetary. I determine that the contribution was 15% of the value of the property.
52. The current case is similar to the above case in that all the spouses were employed and they had income, but one of them could not demonstrate direct financial contribution to the acquisition of the suit property. However, in the current case, there was no evidence that the parties herein operated a joint account at the time when the suit property was acquired. That aspect alone distinguishes the current case from the authority in *TJS v NRS*.
53. In totality of the available evidence on this property, I am not persuaded that the Plaintiff made significant direct financial contribution to its acquisition and development. If she did, then it was minimal and was majorly in the form of non-monetary contribution. In the circumstances, doing the best I can, I conclude that it is clear that it is only the Defendant who bore the direct cost of acquiring the property and that it was him who contributed the lion’s share. Accordingly, and taking into account the value of the property, I place the Defendant’s contribution at 90% while that of the Plaintiff at 10%.

What was the parties’ respective contribution to the acquisition of Mlolongo House- Flat 8 Block 10 on LR No 13302/14?

54. The Plaintiff also claimed a 50% of the Mlolongo House. This Court is also being invited to determine the beneficial interest (if any) of the respective parties.
55. At the onset, I shall first determine whether this property constitutes a Matrimonial Property within the meaning of the Matrimonial Properties Act. The parties told the Court the property was acquired during their marriage and that it is jointly registered in their names.
56. Section 6 of the Act defined ‘matrimonial property’ as follows;
6. Meaning of matrimonial property:
- (1) For the purposes of this Act, matrimonial property means—



- (a) the matrimonial home or homes;
- (b) household goods and effects in the matrimonial home or homes; or
- (c) any other immovable and movable property jointly owned and acquired during the subsistence of the marriage.

57. Based on the above provision, I have no difficulties in finding that the said property is a matrimonial property because it is jointly owned and was acquired during the subsistence of the marriage.

58. I shall now look at the evidence on record to determine each party's contribution to its acquisition. The Defendant stated that he paid the deposit of Kshs.310,000/= to the developer. He stated that he raised the deposit from his savings and that the Plaintiff did not contribute to the same. He produced a Banker's Cheque showing he paid Kshs.310,000/= to the Sellers - Waybridge Investments Ltd. He also stated that he applied and received a loan of Kshs.3,000,000/= from Equity Bank Ltd to cover the Balance of the Purchase Price. He produced a letter from the Bank confirming the same. He produced documentary evidence showing that he paid Waybridge Investments Ltd (through the Bank) sum of Kshs.2,790,000/= on 17th November, 2010.

59. The Defendant also produced evidence to show that the entire loan was being deducted from his salary. He produced an account statement from Equity Bank to show evidence of how he serviced the loan. He stated that he finalized servicing the loan in 2013 and that by that time he had in total spent Kshs.4,511,895.54/= to the acquisition of the property. He also stated that they lived in this property from October, 2010 to April, 2014 and that it was him who catered for the service charge, water, and garbage collection charges during this period. He produced several receipts which showed that he paid various amounts on several occasions for the utility bills and service charge.

60. The Plaintiff on the other hand stated that she contributed a substantial deposit (from her savings and income) towards the purchase of this property. She stated that she took a loan so that the Defendant could use the funds to pay off a M/V loan he was servicing to enable him take a mortgage for the Mlolongo house. She said she gave Kshs.200,000/= towards its acquisition. On cross-examination, she stated that she did not have any evidence that she took the loan. She also agreed that the Defendant took a loan for the Mlolongo property. Although she insisted that she contributed to its purchase, she admitted that she did not have physical evidence to prove it.

61. It is trite law that he who alleges must prove. The burden of proof lies on the party who asserts the existence of a fact or set of facts. Section 107 of the Evidence Act Cap 80, Law of Kenya Provides as follows:

“ 107

- (1) Whoever desires any court to give judgment as to any legal or liability dependent on the existence of facts which he asserts must prove that those facts exist.
- (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”

62. It was for the Plaintiff to adduce evidence to substantiate her claims that she made direct financial contribution to the acquisition of this property. I have analyzed the evidence very carefully to ascertain whether she offered any direct financial contribution. She did not adduce evidence to show that she took a loan of Kshs.200,000/= to help the Defendant off set his then outstanding debts for him to



qualify for the mortgage with the Bank. There was also not evidence that she gave the Defendant Kshs.200,000/= towards the acquisition of the said property. Based on this factual analysis, I am persuaded to find that the Plaintiff did not prove direct financial contribution to the acquisition of the said property.

63. On the other hand, there was evidence that the Defendant paid a deposit of Kshs.310,000/= to the developer. There was also evidence to show that he applied and received a loan of Kshs.3,000,000/= from Equity Bank Ltd. and that the proceeds of the loan (Kshs.2,790,000/=) went to the acquisition of this property. The sum of these two payments is Kshs.3,100,000/= which was the property's purchase price as per the lease document on record. The Defendant also showed that he serviced the loan himself. In addition, the Plaintiff did not claim to have helped the Defendant service the loan. With all these facts, I am inclined to find that the Defendant has proved direct financial contribution and that he paid the purchase price to the tune of Kshs.3,100,000/=.
64. However, the Matrimonial Properties Act provides that contribution may be direct monetary contribution or otherwise. The law requires the Court to also take into account non-monetary contribution. Section 2 of the Act defines 'contribution' as follows;

“contribution” means monetary and non-monetary contribution and includes-

- (a) domestic work and management of the matrimonial home;
- (b) child care;
- (c) companionship;
- (d) management of family business or property; and
- (e) farm work;

65. The Plaintiff told the Court that she gave the Defendant moral support. She stated that she provided the Defendant with companionship, prepared home-cooked meals, managed the household, and performed household duties, including childbearing responsibilities.
66. What percentage, then, should be given to the respective parties? In determining this last part, I associate myself with the decision of the court in PNN v ZWN [2017] eKLR, where Kiage JA observed as follows;

“I think that it would be surreal to suppose that *the Constitution* somehow converts the state of coverture into some sort of laissez-passer, a passport to fifty percent wealth regardless of what one does in that marriage. I cannot think of a more pernicious doctrine designed to convert otherwise honest people into gold-digging, sponsor-seeking, pleasure-loving and divorce-hoping brides and, alas, grooms. Industry, economy, effort, frugality, investment and all those principles that lead spouses to work together to improve the family fortunes stand in peril of abandonment were we to say *the Constitution* gives automatic half-share to a spouse whether or not he or she earns it. I do not think that getting married gives a spouse a free to cash cheque bearing the words “50 per cent.”

67. Similarly, the Court of Appeal in EGM v BMM [2020] eKLR, held as follows;

We think it was erroneous for the learned judge to assume and hold that *the Constitution* gives spouses an automatic 50% share of the matrimonial property simply by being married.

.....



The stated equality means no more than that the Courts to ensure that both parties at the dissolution of a marriage get their fair share of the property. This has to be in accordance with their respective contribution. It does not involve denying a party their due share or unfairly a party by giving such party more than he or she contributed.

68. In totality of the available evidence on this property, I am not persuaded that the Plaintiff made any direct financial contribution to its acquisition and development. If she did contribute, then it was minimal and was majorly in the form of non-monetary contribution. In the circumstances, doing the best I can, I find that it is only the Defendant who bore the direct cost of acquiring the property and that it was him who contributed the lion's share. Accordingly, I place the Defendant's contribution at 90% while that of the Plaintiff at 10%.

Whether the Plaintiff has beneficial interests on M/V Registration no KCZ xxxP

69. The Parties agreed that this M/V was acquired in August, 2020 (during the subsistence of their marriage) and that it is registered in the name of the Defendant. The Defendant produced a Registration Certificate indicating he is the registered owner. I have seen the same and I am satisfied that it was acquired in 2020 and that it is registered in his name.

70. At the onset, I shall determine whether the said M/V constitutes matrimonial property within the meaning of the Matrimonial Properties Act. As already stated earlier, Section 6 of the Act defined 'matrimonial property' as follows;

6. Meaning of matrimonial property:

(1) For the purposes of this Act, matrimonial property means—

- (a) the matrimonial home or homes;
- (b) household goods and effects in the matrimonial home or homes; or
- (c) any other immovable and movable property jointly owned and acquired during the subsistence of the marriage.

71. The evidence on record shows that the said M/V, though acquired during the subsistence of the marriage, is not jointly registered in the names of the parties herein. It is registered in the name of the Defendant. Based on these set of facts, this Court finds that the said M/V does not constitute a matrimonial property within clause 6 (1) (c).

72. I am aware that Courts have developed jurisprudence on the circumstances where a particular motor vehicle can be deemed matrimonial property. In *RWW v EW* [2019] eKLR, the Court held as follows;

Motor vehicles only constitute matrimonial property if they are acquired as family vehicles or for the use of the entire family. The applicant did not tender any evidence to demonstrate that the motor vehicles fell within the category of family cars. What the court gathers is that the cars were bought by the respondent for his exclusive use.

73. Similarly, the Court in *ENK v JNK* [2015] eKLR held as follows;

Motor vehicles only become matrimonial property if they are acquired as family vehicles or for the use of the family. Cars bought for the exclusive use of a particular spouse cannot be said to be family property. A family car should ideally be what is loosely known as a pool



car, available to all within the family. No evidence was led on whether any of the vehicles claimed fell into such category.

74. Based on the above authorities, the Plaintiff was under a duty to show that this particular motor vehicle fell within the category of a family car. However, in my view, she did not give any evidence on whether the said property fell into such category. She did not prove that the said M/V was available to all within the family. Instead, what the court gathers is that the said car was bought by the Defendant for his exclusive use. For these reasons, I find that the said M/V does not constitute a matrimonial property.
75. Nonetheless, the Matrimonial Properties Act provides an avenue through which a spouse can claim an interest in a property that does not fall within the category of a matrimonial property. That avenue is in Section 9 of the Act, which provides as follows;
9. Acquisition of interest in property by contribution
- Where one spouse acquires property before or during the marriage and the property acquired during the marriage does not become matrimonial property, but the other spouse makes a contribution towards the improvement of the property, the spouse who makes a contribution acquires a beneficial interest in the property equal to the contribution made.
76. As a preliminary, I shall first determine who between the two acquired the said M/V. The Defendant produced a Vehicle Importation Agreement - which indicates that he imported the said M/V and that its purchase price was Kshs.1,800,000/=. I have seen the said agreement. The agreement is between the Defendant and the Importing Company, Silverline Motors Ltd. He also produced several bank deposit indicating that he paid the following amounts to the Importing Company; 700,000/= on 7/8/2020; 100,000/= on 24/8/2020; 50,000/= on 24/8/2020; 900,000/= on 24/8/2020; 20,000/= on 28/8/2020; and 10,000/= on 2/9/2020. The total of these payments on record is Kshs.1,780,000/=.
77. The Plaintiff claimed that she contributed to the purchase of the said M/V. She stated that she gave him Kshs.100,000/= in cash to top up. The Defendant agreed that she gave him the said amount but went further to state that the said amount was a soft loan which he repaid on 23/12/2020. She also stated that she stood as a guarantor at the Sacco when he took a loan to pay for the M/V. The Defendant agreed that she played the role of a guarantor but he went on to state that he discharged her 3 months later and that the Sacco did not recover any money from her as a guarantor.
78. I have relooked at the evidence on record, particularly on the disputed Kshs.100,000/=. The Defendant attached an Mpesa Statement showing that he paid Kshs.100,000/= to the Plaintiff on 23/12/2020. The Plaintiff acknowledged receipt of the said amount but disputed the purpose for which the said funds were transferred to her. During her cross-examination, she told the Court that the Kshs.100,000/= was not a refund. She stated that the money could have been for house expenses.
79. I have analyzed the testimonies on this issue carefully. In my view, it is more likely than not that the Defendant took a soft loan of Kshs.100,000/= from the Plaintiff and that the Mpesa transfer on 23/12/2020 from the Defendant to the Plaintiff's Mpesa line was a refund of the same. There was no evidence that the Plaintiff contributed financially to its acquisition. The Defendant produced an account statement from the LSK Sacco showing how he serviced the loan that he had taken to buy the car. Consequently, I find that the said M/V was acquired by the Defendant exclusively.
80. Having found so, the Plaintiff has to bring herself within the provisions of Section 9 of the Matrimonial Properties Act in order to claim a share in the said M/V. Going by the wording of the provision outlined above, the Plaintiff has to show that she made a contribution towards the improvement of the property. However, in my analysis, there was no evidence on record to show that the said M/V had undergone



any improvements since its acquisition by the Defendant. Therefore, the Plaintiff's claim for this M/V fails. I find that the same belongs to the Defendant solely.

What was the parties' respective contribution to the acquisition of M/V Registration no KCK xxxA.

81. The first issue to determine concerning this M/V is whether it constitutes a matrimonial property within the Court's interpretation of a family car in *RWW v EW* [2019] eKLR and *ENK v JNK* [2015] eKLR (both cited above).
82. The Plaintiff, in her supporting affidavit, claimed that the said M/V has been under her use and custody from day one. She also stated that she uses the said M/V to take the children to school and or move them. The Defendant did not deny this in his replying affidavit. I note that the Defendant did not dispute this even during the hearing of the cause.
83. Based on this evidence, I find that it is more likely than not that the Plaintiff has been in use of the said M/V as she claimed, and that she used it for family use and welfare. The upshot is that, in my view, the said M/V fits the definition of a family car and hence constitutes a matrimonial property as interpreted by the Courts in *RWW v EW* [2019] eKLR and *ENK v JNK* [2015] eKLR.
84. The law requires that the division of a matrimonial property depends on a spouse's individual contributions to its acquisition. Section 7 of the Act provides as follows;
 7. Ownership of matrimonial property:

Subject to section 6(3), ownership of matrimonial property vests in the spouses according to the contribution of either spouse towards its acquisition, and shall be divided between the spouses if they divorce or their marriage is otherwise dissolved.
85. What then was the party's individual contribution to its acquisition? The Plaintiff claimed that they made the payments jointly, but it was the Defendants who paid. This was denied by the Defendant. On the other hand, the Defendant claimed that he single-handedly bought the said M/V. He produced a sale agreement for the said M/V dated 16th December, 2016 indicating that its purchase price was Kshs.670,000/=. The seller in the sale agreement indicated that he had already received Kshs.500,000/= from the Defendant. The Defendant claimed, in his replying affidavit, that he paid the remaining balance of Kshs.170,000/= on 30th December, 2016. The Plaintiff did not deny the same in her supplementary affidavit.
86. Based on these facts, I am inclined to find that the Defendant made significant direct financial contribution to its acquisition. I also find that the Plaintiff did not prove direct financial contribution. If she did contribute to its acquisition, then it was minimal and was majorly in the form of non-monetary contribution- in the form of companionship. In the circumstances, I place the Defendant's contribution at 80% while that of the Plaintiff at 20%.

Disposition

87. In determining this matter, I do find that the Plaintiff indeed contributed to the acquisition of the matrimonial properties, namely, the Kileleshwa House, the Mlolongo House, and M/V KCK xxxA at 10%, 10%, and 20% respectively. I also find that she does not have a claim on M/V Registration no KCZ xxxP.
88. In the end the following orders issue:
 - a. The Plaintiff and the Defendant shall share Kileleshwa House situated on Suguta Road, Citi Sea Breeze apartment D5, in the ratio of 10:90% respectively.



- b. The Plaintiff and the Defendant shall share Apartment number 8, Block 10, Waybridge Gardens, Mlolongo, in the ratio of 10:90% respectively.
- c. The Plaintiff and the Defendant shall share M/V KCK xxxA in the ratio of 20:80%, respectively.
- d. The Defendant owns M/V Registration no KCZ xxxP exclusively, and the same is not available for sharing with the Plaintiff.
- e. The three properties be valued within 60 days of the date of this judgment by a valuer to be agreed by the parties. If the parties are unable to agree, the valuation shall be conducted by a government valuer in Nairobi.
- f. Each party is at liberty to buy out the other party within 90 days of the valuation.
- g. That this being a matrimonial matter, I order that each party shall bear their own costs.

89. It is so ordered.

DATE, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 8TH DAY OF JULY, 2025.

.....

C. KENDAGOR

JUDGE

In the presence of:

Court Assistant: Beryl

Ms. Nkatha Advocate holding brief for Mr. Kirimi Advocate for the Applicant

Mrs Mutua Advocate holding brief for Mr. Kimuli Advocate for the Respondent

