



**EMW v BKO (Matrimonial Cause E15 of 2021)
[2025] KEHC 10253 (KLR) (11 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10253 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
MATRIMONIAL CAUSE E15 OF 2021**

**A MSHILA, J
JULY 11, 2025**

BETWEEN

EMW APPLICANT

AND

BKO RESPONDENT

JUDGMENT

1. Before Court is the Petition for division of Matrimonial property dated 2nd October 2021. The Petitioner contends that she was married to the Respondent under customary laws in 1998 and it was officiated at the Attorney General’s Chambers on 4th April 2006. They were blessed with three children in their union. On 30th April 2021, the Petitioner filed for divorce against the Respondent at Milimani Commercial Court and a Decree Absolute was issued on 3rd October 2021. She stated that during the subsistence of their marriage, the parties acquired the suit properties; Kamiti/Anmer/Block XXXX and Kamiti/Anmer/Block XXXX. She contends that they intended to sell the second plot and use the proceeds to build a family house. She avers that the Respondent sold the second plot [Kamiti/Anmer/Block XXXX] to his brother Peterson Ontunya on 12th January 2014. The Respondent used the proceeds for himself. Not only did he not build a family home but he also didn’t use the money on the family. She contends that due to the loan taken to buy the plots, she is financially encumbered and they depended on the Petitioner’s meagre income and the Respondent did not contribute. The children and her are unable to meet their needs adequately and timeously. She states that it is only logical that the court declares that the remaining plot as belonging to her. There is no other suit pending before this Honorable Court or in any other Court in Kenya with regard to the marriage in question. This Honorable Court has jurisdiction to hear and determine this matter.
2. Lastly, the Petitioner, prayed for orders that;-



- i. That the remaining piece of land left Kamiti/Anmer/Block XXXX be declared to solely belong to the Petitioner, and the Respondent ordered to transfer his share of the same to her as to enable her to finally build a home for herself and the children.
 - ii. That the costs of this suit be provided by the Respondent.
3. Benjamin Keroro Ontunya filed his Replying Affidavit dated 23rd February, 2022. He deposed that he agreed that he was married to the Petitioner, they were blessed with three children and that the marriage was dissolved and a Decree Absolute was given on the 3rd October 2021. He received a loan from his then employer, CFC Stanbic Bank Limited in order to purchase the suit properties, where he was described as the Borrower and both the Petitioner and Respondent were therein described as the Chargors of the properties. He contended that even though the Petitioner did not make any financial contribution he registered her as a co-owner in the interest of the financial growth of the family and also because she was his wife. He stated that he never 'convinced' the Petitioner to take out a loan of Ksh.1,300,000/- in order to pay off his debts and in any case, the Petitioner has not provided evidence of this allegation. He deposed that the loan was paid off to the Bank through his salary deduction. On the 29th June 2012, the bank released the title document to him of property Kamiti/Anmer/Block/XXXX. He stated that the property, Kamiti/Block/XXXX was sold to his brother Peterson Ontunya on or about 2014 and that the Petitioner willingly signed off on all the necessary documentation. The proceeds from the sale were used for various expenses of the family. He deposed that after their separation in 2014, he shouldered the burden of putting their children through school to date. He stated that he proposed to the Petitioner to sell the suit property to raise funds to pay for one of their children's fees but she didn't approve. He is aware that the Petitioner was ordered to vacate and/or remove any restrictions placed on the Suit Property by an order of the Court made on 17th February 2016 in Kiambu CMC. He denies that his children were left vulnerable and that he spent the money carelessly. He avers that on advice of his advocates, this Petition is misguided because the Petitioner has not put forward any evidence to show that she contributed, whether by direct financial contribution or otherwise towards the purchase of the Suit Property.
4. In his further affidavit dated 14th April, 2022, the Respondent herein stated that the property Kamiti/Anmer/Block XXXX was sold to Peterson Ontunya in 2011 and not 2014 as previously stated.
5. During the hearing of the matter, EMW [PW1] adopted her statement as her evidence. In cross-examination she stated that she borrowed Kshs.1.3 million which the Respondent used to pay his various loans to be able to acquire a fresh loan. However, she did not have evidence to support this claim. She stated that the Respondent took a loan of Kshs.2.8 million from CFC which he used to purchase the two plots. The plots are in their both names. The Respondent was said to have paid the loan through the employer and the Charge was discharged. She lays claim on Kamiti Block/XXX as the Respondent went behind her back and sold the property. She placed a caveat as the Respondent wanted to sell the other piece of land.
6. BKO [DW1] testified that he pays school fees for his school/college going children. He took a loan to purchase the two pieces of land and that the loan was paid through his salary. Nevertheless, he registered the land in their joint names. He denied that the Petitioner took a loan of Kshs.1.3 million for him to pay off his debt. He denied forcing the Petitioner as the sale for Block XXX was a family affair where they bought a matatu which venture was unsuccessful and the matatu was sold. The Petitioner placed a caveat on Block XXXX when he expressed interest to sell the plot.
7. In cross exam, he claimed that he sold one of the properties but the proceeds were not for building a family home. The Petitioner gave her consent but he was not sure that she signed the same. He stated



that he would build a home for the children as he does not want the Petitioner to build on the suit property. He insisted that the property is jointly owned.

8. After the full hearing the parties were directed to file and exchange written submissions.

Petitioner's Submissions

9. The Petitioner submits that there was substantial monetary contribution given that the Petitioner took Ksh.1,300,000/= to enable the Respondent acquire Ksh.2,800,000/=. Even though the Applicant's money may not have gone directly to acquire the Suit Property, but her contribution enabled the Respondent to qualify and eventually purchase the properties in issue. She submitted that despite earning three times less than the Respondent, she contributed nearly 50%. She paid rent, school fees and cared for the kids especially after the separation as such she deserves 50% of the proceeds from the sale of the plot sold to the Respondent's brother. She submitted that after 20 years of marriage, her financial and emotional support has to matter and be considered.

Respondents' Submissions

10. The Respondent submitted that it would be unfair and unjust and it would run contra to the provisions of Article 40 of the *Constitution* of Kenya [2020] to strip the Respondent of his proprietary rights as an owner of the Suit Property which he solely financed and purchased through hard work all because his marriage to the Petitioner did not work out. Reliance was placed on the case of *JOO v MBO; Federation of Women Lawyers [FIDA KENYA] & Another [Amicus Curiae]* [Petition 11 of 2020] [2023].

Issues For Determination

11. Having considered the Petitioner's Petition for division of matrimonial property, the Respondent's replying affidavit and the parties written submissions, the issues arising for determination are:-
 - i. Whether the Petitioner contributed towards the acquisition of the suit properties
 - ii. Whether the prayers sought should be granted

Analysis

12. It is not in dispute that the Petitioner and the Respondent were husband and wife since 1998 and that their union was solemnized at the Attorney General's Chambers on the 4th of April 2006. They had three issues in the marriage. Through a Divorce Cause filed at Milimani Courts, their marriage was dissolved on 3rd September 2021 and a Decree Absolute dated 3rd October 2021 was issued to that effect.
13. It is also not in dispute that Kamiti/Anmer/Block/XXXX and Kamiti/Block/XXXX were acquired during the pendency and or the subsistence of the marriage. What is in contention, is the contribution by each party.
14. The Petitioner alleges that she took out a loan of Ksh.1,300,000/= so that the Respondent could off set his loan to enable him acquire a fresh loan of Ksh.2,800,000/= which he used to purchase the suit properties. She contended that even though the amount was not used directly to acquire the suit property, the Petitioner made an indirect contribution towards the acquisition of the said property. The Petitioner contends that she solely takes care of the children after the separation and that the Respondent sold one of the pieces of land whose proceeds were expected to be utilized towards building a home for the family.



15. On the other hand, the Respondent avers that he solely acquired the suit properties as he is the one who took out a loan of Kshs. 2.8 million which he paid off using his salary. The suit properties were registered jointly in their names as a matter of practice as the Petitioner was his wife. He denies that the Petitioner took out the loan of Kshs. 1.3 million to assist him off set his loans. He further contends that he pays school fees for the children. His contention was that the remaining suit property is jointly owned.
16. This Court notes that it is not in dispute that the suit properties herein are matrimonial properties as the parties agree that they were acquired during the subsistence of the marriage. Refer to the case of *T.M.V. v F.M.C* [2018] eKLR where Nyakundi J. opined that:-
- “...for property to qualify as matrimonial property, it ought to have been acquired during the subsistence of the marriage between the parties unless otherwise agreed between them that such property would not form part of matrimonial property.”
17. The Petitioner submits that she contributed 50% towards the acquisition of the suit properties as such she deserves half of the matrimonial properties. This fact is denied by the Respondent who insists that he solely acquired the said properties.
18. With regard to contribution, Section 7 of the *Matrimonial Property Act* is clear in its terms that:-
- “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.”
19. Contribution towards the acquisition of matrimonial property is defined under Section 2 of the *Matrimonial Property Act*, 2013 in the following terms;-
- In this Act, unless the context otherwise requires—
- “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.
18. Bearing in mind the above provisions of the law as well as the case law, this Court is of the considered view that the parties herein should share the remaining plot equally. The prayer by the Petitioner to have plot Block XXXX transferred to herself is unsupported by any evidence.
19. There is no doubt that the Respondent took out a loan worth Kshs. 2.8 million towards the acquisition of the suit properties which loan amount he solely paid using his salary.
20. Be that as it may, there is also evidence that the Petitioner equally obtained a loan of Kshs.1.3 million which she avers is a direct contribution towards the acquisition of the matrimonial properties. The Petitioner further made non-monetary contribution in terms of taking care of the children as well as paying rent and school fees for the last born child. This court takes note that the Petitioner also provided companionship to the Respondent.



21. Distribution of matrimonial properties is based on each parties contribution both monetary and non-monetary.
22. In the case of *BWK v SMM* [2024] KEHC 10489 [KLR] the High Court underscored that the division of matrimonial property depends on the contribution of each spouse. The court noted that non-monetary contributions are recognized and must be proven to determine the share each spouse is entitled to.
22. Further, in the case of *Federation of Women Lawyers Kenya [FIDA] v Attorney General & another* [2018] eKLR where the court stated that:-

“The law recognizes equal worth and equal importance of the parties in marriage. Thus, the beneficial share of each spouse as the law on the division of matrimonial property stands in Kenya ultimately depends on the parties proven respective proportions of financial contribution either direct or indirect towards the acquisition of the property. First, the Act recognizes monetary and non-monetary contribution which is clearly defined. By providing that a party walks out with his or her entitlement based on his or her contribution, the section entrenches the principle of equality in marriage.”
23. In the circumstances, therefore, and bearing in mind the evidence on record, this court is satisfied that on a balance of probabilities both parties have demonstrated that they both contributed jointly towards the acquisition of the matrimonial properties both directly and indirectly. However, this Court is satisfied that the Respondent made the larger contribution as such the prayer by the Petitioner to have the remaining plot transferred to her solely does not obtain.

Findings And Determinations

24. To this end, and for the forgoing reasons, this Court makes the following findings and determination;
 - i. The Applicants application is found to be partially with merit
 - ii. The Petitioner and Respondent to divide the remaining matrimonial property namely Kamiti/ Anmer/Block XXXX equally that is on a ratio of 50:50.
 - iii. Each party to bear their own costs

DATED SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 11TH DAY OF JULY, 2025.

A. MSHILA

JUDGE

In the presence of;

Sanja – Court Assistant

Werungu h/b For the Petitioner

N/A For the Respondent

