



**HNM v EIK (Family Originating Summons E052 of 2024)
[2025] KEHC 10287 (KLR) (Family) (18 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10287 (KLR)

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

FAMILY

FAMILY ORIGINATING SUMMONS E052 OF 2024

PM NYAUNDI, J

JULY 18, 2025

IN THE MATTER OF THE MATRIMONIAL PROPERTY ACT 2013.

BETWEEN

HNM APPLICANT

AND

EIK RESPONDENT

JUDGMENT

1. The Originating Summons dated 30th August 2024 is brought by the Applicant against the Respondent seeking the following orders;
 1. That the Honourable Court be pleased to fairly divide the following matrimonial property in accordance to contribution by each party;
 - i. Title Number XXXX/4 (Original No. XXXX/2) and developments thereon;
 - ii. Common share of Title Number Kajiado/Lorngosua/XXXX.
 2. That the Respondent bears the costs of this suit.
 3. Any other orders that this Honourable Court may deem fit to grant.
2. The Summons was supported by an Affidavit of even date sworn by the Applicant.
3. The Respondent did not enter appearance or file a replying affidavit. This suit is therefore, undefended.



Applicant's Case.

4. The Applicant states briefly that he and the Respondent got married on 14th February 2015. Their union was blessed by two issues: EMWN who was born on 7th December 2015 and MSMN who was born on 5th October 2018. Their marriage was dissolved vide Divorce Cause No. EXXX of 2012. During the subsistence of their marriage, they acquired two properties known as; Title Number XXXX/4 (Original No. XXXX/2) located in Bustani Gardens Nairobi and Title Number Kajjado/Lorngosua /XXXX. He avers that Title Number XXXX/4 (Original No. XXXX/2) is jointly registered in their names. The property was acquired for purposes of constructing their matrimonial home. He argues that he bought the property using proceeds from his employment and took out a mortgage facility in 2021 for the construction of the property. That despite the Respondent being gainfully employed, she did not contribute financially towards the purchase of this property.
5. He avers that Kajjado/Lorngosua/XXXX was acquired by the Respondent together with Lydia Wangechi Nginga and Lydia Nyanguthi Kangara who are married to his brothers. The property is owned in equal shares by the three. That the property was acquired in May 2021 during the pendency of their marriage.
6. He argued that during the subsistence of their marriage and after their separation, he contributed towards household expenses including rent, food, utilities, medical needs, entertainment, holidays, school fees for the minors and school related expenses. That efforts to reach a settlement with the Respondent have been futile. He urged the court to share the properties in accordance to contribution by the parties.
7. The summons was disposed of by way of written submissions. The Respondent did not file any written submissions.

Applicant's Submisssions.

8. The Applicant submitted that since the properties were acquired by both parties differently, each party is entitled to the property they acquired. He urged the court to allow him have Title Number XXXX/4 (Original No. XXXX/2) located in Bustani Gardens Nairobi because he is servicing the mortgage solely. The Respondent on the other hand should be allowed to keep Kajjado/Lorngosua/XXXX.

Analysis And Determination.

9. This Honourable Court having considered the application, Supporting Affidavit and submissions on record finds that the issues for determination are:
 - i. Whether the suit properties constitute matrimonial property.
 - ii. What is the contribution of each party to the acquisition of matrimonial property.
 - iii. What ratio is to be adopted in the division of the suit properties.

Whether the suit properties are matrimonial properties.

10. Section 6 of the *Matrimonial Property Act* defines 'matrimonial property' as:
 - 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.
11. Under Section 2 of the [Act](#), 'Matrimonial home' has been defined as: -
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.
12. In the case of *T.M.v v F.M.C* [2018] eKLR, 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.”
13. In the Ugandan High Court, Mwangusya J. in *Paul Kagwa v Jackline Muteteri (Matrimonial Cause-2005/23) [2006] UGHC 17 (18 May 2006)* while citing Bossa, J in *John Tom Kintu Mwanga v Myllious Gafafusa Kintu* (Divorce Appeal No. 135 of 1997) (unreported) expressed himself as hereunder: -
“On the last issue of whether the petitioner is entitled to matrimonial property, I clearly believe that she does and I so hold. Matrimonial property is understood differently by different people. There is always that property which the couple chose to call home. There may be property which may be acquired separately by each spouse before and after marriage. Then there is property which the husband may hold in trust for the clan. Each of these should in my view be considered differently. The property to which each spouse is entitled is that property which the parties choose to call home and which they jointly contribute to.”
14. In this case the Applicant agrees that the LR Number XXXX/2 was acquired during the subsistence of the marriage. The sale agreement presented before this court was drawn on 18th September 2019. The transfer of the property into the names of the two applicants was done on 9th November 2020. I therefore hold that LR Number XXXX/2 is matrimonial property.
15. Regarding Kajiado/Lorngusua/XXXX, the applicant argues that the property was acquired during the subsistence of the marriage and is registered in the name of the Respondent and two others.
Section 107 of the [Evidence Act](#), Cap 80, Laws of Kenya provides that;
Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
16. The Applicant has not demonstrated his contribution or otherwise towards the acquisition of property Kajiado/Lorngusua/XXXX and that the parties intended for it to be recognised as matrimonial property. I therefore decline to find that the said asset constitutes matrimonial property.

What contribution did the parties make towards the purchase of LR No. XXXX/2?

17. The law governing division of matrimonial property is as expressed in Constitution of Kenya, 2010 and the [Matrimonial Property Act](#). Article 45(3) of the [Constitution](#) provides:
Parties to a marriage are entitled to equal rights at the time of the marriage, during the marriage and at the dissolution of the marriage.



18. The *Matrimonial Property Act* was enacted to give effect to the principle in Article 45(3) of the Constitution. Section 7 of the *Act* makes provision relating to ownership of matrimonial property as follows:

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. Additionally, there are certain presumptions that may be made as to property acquired during marriage. Section 14 of the *Act* provides:

Where matrimonial property is acquired during marriage—

- a. in the name of one spouse, there shall be a rebuttable presumption that the property is held in trust for the other spouse; and
- b. in the names of the spouses jointly, there shall be rebuttable presumption that their beneficial interests in the matrimonial property are equal.

20. Where there is joint registration, a spouse is entitled to lead evidence to show that, in fact, the beneficial interest is not equal: that his/her contribution is such that, although the property was registered jointly, he/she was the owner of the property, or the contribution was much more than that of the other spouse. In other words, in the division of matrimonial property, contribution of either spouse is the key consideration, as marriage does not interfere with the proprietary rights of an individual. The court, in each case, has to properly evaluate the evidence and determine the level of contribution of each spouse towards the acquisition and/ or the development of the matrimonial property in question.

21. In the case of *TMW v FMC* [2018] eKLR the courts held as follows:-

“As regards ownership of Matrimonial Property, Section 7 of the *Matrimonial Property Act*, states as follows: “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.”

22. The above provision of law entails that ownership of matrimonial property vests with the husband and wife/wives according to what each party contributed towards the acquisition of the same. This section introduces yet another aspect as far as ownership of property by spouses is concerned, that is the aspect of contribution of each party towards the acquisition of such property. It is therefore possible that the parties will own the property but not necessarily in equal shares. The Respondent has not laid a claim to the property.

23. Similarly in the case of *GNK v MWNN* (Civil Appeal No. XXX of 2019, the Court of Appeal in finding that the presumption on equal contribution to a jointly owned property had been rebutted held that:-

The appellant was able to rebut the presumption that the properties which were jointly registered were equally owned.....”. The court went on to observe that:-“.....we do not understand why the Respondent wants to benefit from the hard earned labour of the Appellant

24. The applicant argues that although the property is registered jointly in both their names, he paid for the purchase price solely and developed the property solely. He produced two RTGS forms showing deposit of the purchase price, he has also produce Bank statements showing that he has been paying



the loan. He produced statements of accounts on what he spent constructing their matrimonial home. I find that he is entitled to 100 % share of the said property.

25. In conclusion based on the foregoing this court makes the following orders: -

- i. The plaintiff is entitled to 100 percent share of Title Number XXXX/4 Original No. XXXX/2 located in Bustani Gardens Nairobi
- ii. Title Number Kajiado/Lorngusua/XXXX is not matrimonial property.
- iii. The defendant will execute documents to facilitate the change of ownership within 21 days of presentation to her. In default the same will be executed by the Deputy Registrar
- iv. As the respondent did not participate there shall be no order as to costs.

It is so ordered.

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 18th Day of July, 2025.

M NYAUNDI

HIGH COURT JUDGE

In the presence of:

Kigera for Applicant

Fardosa Court Assistant

