



**JMU v JBM (Matrimonial Cause E003 of 2022)  
[2025] KEHC 10419 (KLR) (18 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10419 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
MATRIMONIAL CAUSE E003 OF 2022  
RN NYAKUNDI, J  
JULY 18, 2025**

**BETWEEN**

**JMU ..... APPLICANT**

**AND**

**JBM ..... RESPONDENT**

**JUDGMENT**

1. Vide an amended Originating Summons dated 2<sup>nd</sup> November, 2023 the applicant instituted this cause the principal prayer sought being that a declaration be issued that the properties listed therein, acquired by the Respondent during the subsistence of their marriage and registered in the name of the Respondent who holds the titles in trust for himself and the applicant and their respective shares as legal owners and cesteui que trust respectively. The orders sought are crafted as follows:
  - a. A declaration be and is hereby issued declaring that the land parcel nos.
    - i. Eldoret Municipality BlockXX/XXXX, (Railway Plot No.. XXX/XXX Plots XX,XX,XX,XX and plot no/ X/XX.
    - ii. Eldoret Municipality Block XX/XXXX.
    - iii. Eldoret Municipality XX(King'ong'o)/XXXX.
    - iv. Eldoret Municipality Block XX(King'ong'o)XXXX.
    - v. Eldoret Municipality Block XX(King'ong'o)/XXXX.
    - vi. Eldoret Municipality Block XX(King'ong'o)/XXXX.
    - vii. Eldoret Municipality Block XX(Huruma) XXX.
    - viii. Langas Phase 1/XXX,



- ix. Portion Of Pioneer/Langas Block 1 (Malel) XX and.
  - x. Eldoret Municipality Block XX(Pipeline),
  - xi. Matungulu/Kambusu/XXXX
  - xii. Miti Mingi Block No. X/XX
  - xiii. Matungulu/Kambusu/XXXX
  - xiv. Matungulu/Kambusu/XXXX
  - xv. Matungulu/Kambusu/XXXX
  - xvi. Eldoret Municipality Block 4/XXXX
  - xvii. Vehicles Of Registration Number XXX XXX And XXX XXX are matrimonial property jointly acquired and owned by the Applicant and the Respondent and should only be dealt with appropriately, charged for, finance, sold or otherwise disposed off in a manner acceptable to and compatible with the interest and rights of the Applicant herein.
- b. A declaration be and is hereby issued declaring that the properties acquired by the respondent during the subsistence of their marriage and registered in the name of the respondent who holds the titles in trust for himself and the applicant and their respective shares as legal owners and cestui que trust respectively.
  - c. A declaration that a trust was constructed or resulted in respect of the properties herein listed above by virtue of the marriage between the Applicant and the Respondent.
  - d. This Honourable court do issue orders compelling the land registrar Eldoret to rectify the title of the properties and have both the applicant and the respondent registered jointly as proprietors.
  - e. A declaration that the Applicant and the Respondent have been husband and wife hence the Applicant is entitled to share equally or get whole share of all or a part of the properties registered in the name of the Respondent or beneficially entitled to him acquired during the subsistence of the Applicant's and the Respondent's marriage.
  - f. A declaration that the Applicant contributed wholly or partly to the acquisition of the properties registered in the Respondent's name.
  - g. Upon grant of the foregoing prayers, a permanent injunction do and is hereby issued restraining the respondent by himself, servants and employees from interfering with the applicant's lawful enjoyment and quiet possession of the properties.
  - h. Such other orders be granted as the court deem fit and just in the circumstances.
  - i. Costs be awarded to the applicant.
2. The applicant advanced grounds that she was married to the Respondent in the year 1976 pursuant to the provisions of CAP 151 now repealed at Tala Mission Church.
  3. The parties were subsequently blessed with three issues namely FD MM, FNM, And ASM all of who are now adults.
  4. The Parties acquired a number of properties during the subsistence of their marriage stated above.



5. Their marriage irretrievably broke down leading to the dissolution of the marriage on 31<sup>st</sup> of May 2022 through a decree nisi issued by the court.
6. That the Respondent has taken advantage of the fact that the marriage stood dissolved to harass, and threaten the Applicant.
7. That the Respondent abused the trust that the titles of the various properties acquired during marriage were registered in his sole name coupled with the fact that the marriage was dissolved to harass and threaten to deprive the Applicant of her source of livelihood in her advanced age.
8. That the Respondent has threatened the tenants of Eldoret Municipality Block XX/XXXX of eviction if they fail to remit rent to him yet surprisingly for more than fifteen years the Applicant has been the one collecting rent to cater for her needs.
9. That the Respondent has gone further to dispose off Eldoret Municipality Block XX (King'ong'o) XXXX which is matrimonial property.
10. That the Respondent wanted to dispose off certain parcels of land namely Eldoret Municipality Block XX(King'ong'o) XXXX,XXXX AND XXXX by putting a placard "for sale" were it not for the Applicant's step to register a caution on the properties.
11. That the Applicant is being denied peaceful enjoyment of her property a right which is ingrained in *the constitution*.

### **Replying affidavit**

12. In response to the summons, the defendant deposed an affidavit in which he made the following averments:
  - a. That the Plaintiff and I were legally husband and wife having solemnized our marriage pursuant to the Provisions of the African Christian Marriage and Divorce Act, Cap 151 of the Laws of Kenya in the year 1976 at Tala Mission Church, Machakos.
  - b. That we were subsequently blessed with three issues of the marriage namely Kennedy Musyimi, FNM and Saumu Anastacia Musyimi all of who are now adults.
  - c. That at the time of our marriage, I was gainfully employed by the Kenya Railways Corporation while the Plaintiff was a housewife.
  - d. That I secured funds from my employment and businesses which funds were utilized towards development and/or acquisition of several properties. I confirm that I solely contributed to the said acquisition and/or development as the Plaintiff has always been a house wife.
  - e. That the prayers as sought are legally untenable for the reasons that;
    - i. Some of the properties sought to be distributed are registered in the names of 3<sup>rd</sup> parties who have not been enjoined as to this suit.
    - ii. The Plaintiff has always been a housewife hence contributed absolutely nothing towards the acquisition and/or development of the properties she seeks distribution. She is thus not entitled to any share.
    - iii. Some of the properties being sought to be distributed are strange particularly Eldoret Municipality Block XX(Action) and Eldoret Municipality Block XX(Pipeline)



- f. That the Plaintiff became physically, emotionally and psychologically abusive and started treating me with contempt and disrespect after I retired from employment which culminated to me moving court to have our marriage dissolved.
- g. That our marriage/union having been duly dissolved in law, it is only fair and just that the properties acquired during the subsistence of the said marriage be distributed in accordance with our respective contributions.
- h. That It not for my financial provisions, the properties the Plaintiff seeks to be distributed would not have been acquired.
- i. That the properties enumerated in the Originating Summons (save for the strange ones) are in the sole possession and/or control of the Plaintiff to my detriment.
- j. That I am now facing the danger of losing all my past investments and I would suffer great injustice should the Plaintiff retain the sole occupation, possession and/or control of the said properties which were acquired by my sole efforts.
- k. That in the foregoing, I pray that the said properties be shared according to our contribution, if any and/or in such other manner that the court may deem fit and just and/or the same be sold and the proceeds thereof shared proportionately.

#### **Applicant's submissions**

- 13. Learned Counsel Mr. Kigen filed written submissions dated 20<sup>th</sup> June, 2025 on behalf of the applicant in which he isolated three issues for determination being: what constitutes matrimonial property, whether the Plaintiff contributed towards acquisition, development and/or improvement of matrimonial properties and finally what share is each party entitled to?
- 14. Mr. Kigen, Advocate presented comprehensive written submissions seeking various declarations and orders regarding properties acquired during the couple's marriage. The parties were married in 1976 and blessed with three children before their marriage was dissolved through a decree nisi issued on 31<sup>st</sup> May, 2022.
- 15. On the first issue, learned counsel Mr. Kigen submitted that the definition of matrimonial property forms the cornerstone of every matrimonial proceeding, as only such property can be distributed in matrimonial proceedings. He argued that matrimonial property is aptly captured under section 6 of the Matrimonial Properties Act, which defines it comprehensively to include the matrimonial home or homes, household goods and effects, and any other immovable and movable property jointly owned and acquired during the subsistence of marriage.
- 16. In advancing this argument, counsel emphasized that the Matrimonial Properties Act of 2013 defines matrimonial home at section 2 as any property owned or leased by one or both spouses and occupied or utilized by the spouses as their family home. He contended that at the inception of their union, the parties owned no property but first established their matrimonial home at Langas Phase 1/XXX, which is currently inhabited by one of their children, before moving to Eldoret Municipality Block XX/XXXX, which they purchased between 1997-1998 and subsequently developed.
- 17. Mr. Kigen argued that the Respondent has consistently maintained that the property is not matrimonial property, particularly claiming that the matrimonial home is registered in the name of Kenya Railways rather than the Respondent's name. However, counsel submitted that the couple has a beneficial interest in the property by virtue of bidding for it, developing it, and staying on it



- continuously from 1995 to date, with no evidence that the registered entity has ever threatened to evict the couple.
18. Counsel relied heavily on established case law to support the applicant's position. He cited the case of *E N K vs. J N K* [2015] eKLR, where Justice Musyoka held that inherited property forms part of matrimonial property provided the inheritance took place during the subsistence of marriage. Additionally, he referenced *S N vs. F M* [2019] eKLR, where Justice Mabeya held that any property acquired during the subsistence of marriage, including inherited property, forms part of matrimonial property, with the only exception being property acquired before marriage.
  19. Mr. Kigen urged this Honourable Court to invoke Section 14(1) of the Matrimonial Properties Act, which establishes a rebuttable presumption that where matrimonial property is acquired during marriage in the name of one spouse, it is held in trust for the other spouse. In support of this submission, he relied on the case of *Echaria v Echaria*, where the court established the principle that beneficial shares depend on proven respective proportions of financial contribution towards property acquisition.
  20. On the question of contribution, learned counsel Mr. Kigen submitted that contribution is defined under Section 2 of the *Matrimonial Property Act* to include both monetary and non-monetary contributions, encompassing domestic work, management of the matrimonial home, child care, companionship, and management of family business or property and farm work. He argued that contribution serves as a key factor in determining the mode of distribution of matrimonial property, citing the celebrated case of *JOO v MBO* (Supreme Court Petition Number 11 of XXXX), where the Learned Justices emphasized that both direct and indirect contributions are considered in determining distribution modes while bearing in mind principles of fairness and human dignity.
  21. Mr. Kigen presented extensive evidence of the applicant's substantial contributions throughout the marriage. He submitted that during the initial years until 1983, the applicant pursued a career as a public health educator at the Ministry of Health, using her earnings to support the family. He argued that the applicant never stopped working voluntarily but was forced by the Respondent, who strongly opposed her employment and resorted to extreme measures such as burning her work clothes and shoes to coerce her into assuming the role of a housewife.
  22. Counsel further argued that as a housewife, the applicant took care of the family and children while overlooking family business encompassing administrative tasks, financial filings, and ensuring compliance with trust fund obligations. He contended that this provided a conducive environment for the Respondent, who was working as a public health officer at Kenya Railways, to acquire and develop various properties.
  23. In demonstrating the applicant's business acumen, Mr. Kigen submitted that she managed a diverse array of businesses before, during, and after their marriage, including hotels, butcheries, a cereal shop, and a motor vehicle spare parts business. He particularly highlighted that the applicant operated a Matatu business within Eldoret under registration number XXX XXXX.
  24. Counsel argued that in 2001, the applicant personally undertook the entire process of registering the family business under the name "Mussy Commercial Agency," culminating in its formal registration on 3<sup>rd</sup> October, 2001. He submitted that subsequently, on 30<sup>th</sup> August, 2004, the applicant undertook the process of renaming the family business from "Mussy Commercial Agency" to "Muskat Commercial Agency," with the proprietors listed as the Respondent and their three children.
  25. Mr. Kigen emphasized that throughout their marriage based on mutual trust, the parties maintained bank accounts under NIC Bank, KCB, and Barclays, where all business profits were deposited. He



- argued that the applicant played a pivotal role in both acquisition and development of properties, contributing substantially through both monetary and non-monetary efforts such as managing the family household, nurturing the three children, providing unwavering companionship to the respondent, and overseeing operational facets of family enterprises.
26. Learned counsel submitted that through the applicant's efficient management and diligent maintenance of family properties, the couple was able to leverage their proceeds towards acquisition and development of additional commercial and residential properties in Racecourse, Langas, and Huruma. He argued that the applicant made substantial contributions towards purchasing furniture, household goods, fittings, and utilities for their matrimonial home.
  27. He further contended that the applicant diligently provided for the children's welfare by procuring food, clothing, and managing school-related expenses, while actively participating in children's extracurricular activities, grooming, and entertainment. Counsel emphasized that the applicant consistently attended all school functions and actively engaged in matters concerning the children's education.
  28. Mr. Kigen argued that since the Respondent's retirement, he refrained from engaging in any form of income-generating activities and played no active role in day-to-day operations of family enterprises. He submitted that following retirement, the Respondent's pension benefits were neither utilized towards acquisition, development, nor maintenance of family properties, nor were they allocated to meet the family's financial needs.
  29. Counsel presented serious allegations regarding the Respondent's conduct after the marriage breakdown. He argued that when the applicant resisted unauthorized sales of properties, the Respondent grew cold towards her, which escalated and led to filing for divorce. He submitted that the Respondent transferred some matrimonial properties to third parties and his mistress, specifically Miti Mingi Block X/XX And Eldoret Municipality Block XX (King'ong'o) XXXX, to one Esther Wangare with whom he had extramarital affairs.
  30. Mr. Kigen further argued that the Respondent devised tactics to conceal the identity of some matrimonial properties and disposed of them through deliberate removal of pertinent documentations, including title deeds, pay slips, log books, bank statements, shareholding certificates, and relevant records used in treasury bills investments.
  31. Regarding the mode of division, learned counsel Mr. Kigen submitted that the Court must consider each case according to its peculiar facts and circumstances. He relied on the case of TKM v SMW [XXXX] eKLR, which emphasized that courts must deal with each case on the basis of its peculiar facts and circumstances while bearing in mind the principle of fairness.
  32. He argued that Article 45(3) of *the Constitution* provides that parties to a marriage are entitled to equal rights at the time of marriage, during marriage, and at dissolution of marriage. Citing the Supreme Court case of JOO v MBO; Federation of Women Lawyers (FIDA Kenya) & another (Amicus Curiae), counsel submitted that *the Constitution* acts as a means of providing equality at the time of dissolution, meaning each party is entitled to their fair share of matrimonial property and no more.
  33. Mr. Kigen invoked the doctrine of Equity, referencing the English case of Gissing v Gissing [1971] AC 886, where the maxim "equality is equity" was established. He argued that equity advocates for parties who may seem disadvantaged for failing to prove direct financial contribution not to be stopped from getting a share of matrimonial property.
  34. Counsel submitted that the court should consider both direct and indirect contributions of the applicant in property acquisition, development, and improvement. He urged the Court to consider



attempts by the Respondent to disinherit the family by offering properties for sale to third parties without the applicant's knowledge or consent.

35. Based on his extensive submissions, Mr. Kigen argued that the general rule or default mode of distribution of matrimonial property should be on a 50:50 ratio, with any other ratio being an exception that should only be resorted to under exceptional and justified circumstances. He relied on the Canadian case of *Hardwood v Thomas* [1981] 4167 (NS CA), which acknowledged that equality is encouraged in property division.
36. Learned counsel urged the Honourable Court to grant the applicant a fifty percent share of the matrimonial property, arguing that based on the Apex Court's guidance in *JOO V MBO* (Supra), and considering the various ways in which the applicant substantially contributed towards acquisition, development, and improvement of matrimonial property both directly and indirectly, she is entitled to an equal share based on her substantial contributions.
37. In conclusion, Mr. Kigen submitted that during the marriage that lasted close to fifty years, the applicant substantially contributed towards acquisition, development, and improvement of matrimonial property, thereby entitling her to a fifty percent share. He equally submitted that in distributing the matrimonial property, the court should take into account properties already sold by the Respondent and allocate them to form part of his proper share. Finally, he sought costs against the Respondent for these proceedings.

### **Analysis & Determination**

38. This matter presents fundamental questions concerning the distribution of matrimonial property acquired during a marriage that spanned close to five decades. The parties, having been married in 1976 under the provisions of the African Christian Marriage and Divorce Act (Cap 151), accumulated substantial assets during their union before their marriage was dissolved through a decree nisi issued on 31<sup>st</sup> May 2022. The central issues before this Court revolve around the characterization of property as matrimonial in nature, the assessment of both monetary and non-monetary contributions by each spouse, and the appropriate framework for equitable distribution in accordance with constitutional principles and statutory provisions.
39. On divorce the matrimonial property regime is dissolved for the spouses elect to move on and open a new chapter as the old partnership is no longer tenable. The dissolution of the matrimonial property regime requires the court to whom jurisdiction is entrusted to ascertain what property is owned by the spouses and to apply the provisions of the Act so that each spouse receives his or her entitlement.
40. The starting point is usually not controversial but as the factors come into play the parties realize that they have not contributed something substantial to the purchase, acquisition and improvement of the marital estate to be entitled a fair share of the assets. In the search for a fair outcome, it is pertinent to have in mind that fairness generates obligations as well as rights. It is not a case of taking away from one spouse and giving it to the other spouse which belong to the former. The courts discretion should be exercised so that each party to that dissolved marriage is entitled to a fair share of the net estate of the marital property. What do I see as the principles to guide the court to distribute the marital state fairly and proportionately. In the present context the statute provides parameters on contribution towards the purchase and acquisition of the net marital estate capable of being distributed between the spouses. When the marriage ends like in the instant case fairness requires that the assets of the spouses should be divided primarily so as to make provision for now the spouses who have permanently separated so as to make provision for their respective housing and financial needs. This has got to take into account



a wide range of matters such as the spouses, ages, their future earning capacity, the family standard of living and any exceptional circumstances of either spouse

41. What do I see as the greatest challenge with the interpretation of the provisions of the *matrimonial property Act* of Kenya? It is the difficulty to ensure substantive equality for women upon divorce from their husbands one major issue being the younger valuation of non-financial contributions commonly referred to as home making, companionship, care giving, etc. In the African culture and customs these roles having been seen as less valuable compared to financial contributions leading to an imbalance in the distribution or division of the matrimonial property. For example the trending jurisprudence in Kenya one can see or notice courts often struggling to quantify the division in terms of percentages of the matrimonial property as between spouses. It is indeed a tall order for a court to quantify the economic value of domestic work, companionship, caregiving, of women spouses so that one can say that there has been equity in the division of the marital state. This challenge has often resulted in unfair settlement for women who have primarily in a marriage union taken the role of homemakers.
42. The Republic of Kenya has entrenched International Law as part of our sources of law as provided for under Article 2 (5) &(6) of *the constitution*. Prior to that historically, Kenya had ratified International and regional treaties that guarantee the Right to Freedom to discrimination on multiple grounds including sex, gender, marital status, race, and other status. The important instruments specific to the rights of women include: Elimination of all Forms of Discrimination Against Women (CEDAW) and the African Union Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol), both of which place an obligation on it to eliminate discrimination against women in all matters relating to marriage and its dissolution against women in all matters relating to marriage and its dissolution. The Maputo Protocol for example makes specific mention of the right to an equitable sharing of the joint property deriving from the marriage, between men and women. In *John Tom Kintu Muwanga v Myllious Gafabusa Kintu* the court made the following observations: “ Matrimonial property is understood differently by different people. There is always property which the couple chose to call home. There may be property which may be acquired separately by each spouse before or after marriage. Then there is property which a husband may hold in trust for the clan. Each of these should, in my view be considered differently. The property to which each spouse should be entitled is that property which the parties chose to call home and which they jointly contribute to”
43. As courts navigate this landscape under the *matrimonial property Act* things are becoming clearer that the marriage vows, being a care giver, children rearing, and companionship compared to monetary contribution in the acquisition of property does not give any spouse an automatic 50% share in the marital net estate. The Supreme court in *Ogetonto Case* has profoundly held the view that a spouse's share in the matrimonial property is independent on their contribution to its purchase, improvement, and infrastructural development. As much as all factors on contribution are presumes to carry the same weight but in my view monetary contribution is of a higher measure metrics.
44. It is presumed that since the spouses have lived together for decades like in the instant case upon divorce the sense of justice and fairness should demand that they both share equally the fruits of their success. In practical sense in certain litigation cases a woman spouse might walk out of the marriage empty handed not even a roof to cover herself with her children. This is the impression I created when listening and admitting evidence from the plaintiff and the defendant as they wrestled to strongly establish their case on division of the wealth they have created over time. In fact the defendant/ Respondent while in the dock I paused the question what does he think his ex- spouse is worthy of the entire matrimonial estate. His answer was candid that the Plaintiff/Applicant walks out of the marriage with nothing. This view is sometimes held by many other spouses who say that domestic services, children rearing,



companionship, do not count when it comes to acquisition of both movable and immovable assets of the estate. These principles as discussed, will feature prominently at the tail end of this judgement.

45. The case presents a confluence of legal regimes; the repealed Married Women's Property Act of 1882 under which similar disputes were historically determined, the transformative provisions of Article 45(3) of *the Constitution* of Kenya 2010, and the comprehensive framework established by the *Matrimonial Property Act* No. 49 of 2013. The Supreme Court's landmark decision in *JOO v MBO* (Supreme Court Petition Number 11 of XXXX),) has provided crucial guidance on the interpretation of equality in matrimonial property distribution, emphasizing that constitutional equality does not automatically translate to mathematical equality but rather to fairness based on proven contribution.
46. The Court of Appeal in *PNN v. ZWN (Civil Appeal No. 128 of 2014)* spoke on the question of division of matrimonial assets in Kenya. Justice Kiage J.A observed 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. He noted further as follows:

“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.

Thus it is that *the Constitution*, thankfully, does not say equal rights “including half of the property.” And it is no accident that when Parliament enacted the *Matrimonial Property Act*, 2013, it knew better than to simply declare that property shall be shared on a 50:50 basis. Rather, if set out in elaborate manner the principle that division of matrimonial property between spouses shall be based on their respective contribution to acquisition.”
47. The extensive property portfolio in dispute encompasses numerous parcels of land across Eldoret Municipality, including residential and commercial properties, rental units, vehicles, and various other assets accumulated over the duration of the marriage. The applicant's case is predicated on both direct financial contribution during her employment years and substantial indirect contributions through domestic management, child care, business administration, and the provision of an enabling environment for the respondent's property acquisition endeavours.
48. This Court must therefore navigate the interplay between constitutional principles of equality, statutory provisions governing matrimonial property, and established jurisprudence while ensuring that the determination reflects the actual contributions of each party and serves the interests of justice and fairness.
49. Having carefully considered the pleadings, evidence, and submissions by both parties, I have isolated the following issues for determination:
  - a. What constitutes matrimonial property in the context of this case?
  - b. What contributions, both monetary and non-monetary, did each party make toward the acquisition, development, and improvement of the matrimonial property?
  - c. What is the appropriate legal framework for determining the distribution of matrimonial property?
50. The definition of matrimonial property forms the cornerstone of any matrimonial property proceeding, as only such property can be subject to distribution upon dissolution of marriage.



51. For a property to qualify as a matrimonial property, it must meet the definition under Section 6 of the Act. For the purposes of this case, Section 6(1) of the Act provides that: -

“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”

52. 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.”

53. Section 14 of the Act provides that:

“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.”

54. Having established that the parties were validly married in 1976 under the African Christian Marriage and Divorce Act (Cap 151), and that their marriage subsisted until dissolution on 31<sup>st</sup> May 2022, this Court must now undertake the critical task of identifying which properties qualify as matrimonial assets subject to division. This determination hinges on the acquisition date of each disputed asset, as Section 6 clearly delineates matrimonial property as comprising assets acquired during the subsistence of the marriage.

55. Eldoret Municipality Block XX/XXXX (Railway Plot No.. XXX/XXX): The evidence establishes that this property was acquired between 1997-1998 during the subsistence of marriage. The parties developed and occupied this property as their matrimonial home continuously from 1995. Despite registration in the name of Kenya Railways, the parties acquired beneficial interest through purchase, development, and continuous occupation without challenge from the registered entity. This constitutes their matrimonial home under Section 6(a) and forms part of matrimonial property.

56. Eldoret Municipality BlockS 14/XXXX, 23(King'ong'o)/XXXX, XXXX, XXXX, XXXX: The evidence demonstrates acquisition of these properties during the marriage period. As immovable property acquired during subsistence of marriage, these fall squarely within Section 6(c) definition. The registration in the respondent's sole name triggers the presumption under Section 14(1).

57. Eldoret Municipality Block XX(Huruma) XXX: Acquired during marriage as evidenced by the documentation. Constitutes matrimonial property under Section 6(c).



58. Langas Phase 1/XXX: This property served as the parties' first matrimonial home and remains occupied by one of their children. Clear evidence of acquisition during marriage establishes its status as matrimonial property.
59. This Court must address with clarity the status of the property at Langas Phase 1/XXX, which currently houses one of the parties' adult children. While the evidence shows this property served as the parties' first matrimonial home and remains occupied by their child, it is imperative to state unequivocally that this property does not belong to the child by virtue of occupation. The child's occupation of the property does not confer any ownership rights whatsoever. This property was acquired during the subsistence of the marriage and forms part of the matrimonial estate available for distribution between the parties. Any decision by the parties to subsequently allow their child to continue occupying or to transfer the property to the child must be made as part of their post-distribution arrangements and does not affect this Court's determination of the matrimonial property pool. The property is therefore included in the distribution matrix as matrimonial property subject to division according to the parties' respective contributions.
60. Matungulu/Kambusu Properties (XXXX, XXXX, XXXX, XXXX): These properties were acquired during the subsistence of marriage as commercial investments. They constitute matrimonial property under Section 6(c).
61. Miti Mingi Block No. X/XX: The evidence reveals this property was allegedly transferred to one Esther Wangare with whom the respondent had extramarital affairs. Despite such transfer, the property was initially acquired during marriage and forms part of the matrimonial pool for distribution purposes.
62. Vehicles XXX XXX and XXX XXX: As movable property acquired during marriage, these vehicles constitute matrimonial property under Section 6(c).
63. This Court finds that all properties enumerated in the amended Originating Summons, having been acquired during the 46-year subsistence of the parties' marriage from 1976 to 2022, constitute matrimonial property within the meaning of Section 6 of the *Matrimonial Property Act*.
64. However, regarding properties that have already been sold or disposed of during the marriage, particularly Eldoret Municipality Block XX (King'ong'o) XXXX which the evidence shows was disposed of by the Respondent, and any other properties that may have been sold and have since changed hands, these cannot form part of the distributable net matrimonial estate available for division. While such properties undoubtedly formed part of the matrimonial estate when acquired during the marriage, their subsequent disposal means they are no longer available for distribution between the parties. The Court can only distribute assets that remain within the matrimonial pool at the time of dissolution.

What contributions, both monetary and non-monetary, did each party make toward the acquisition, development, and improvement of the matrimonial property

65. It is trite law that whoever alleges must prove. The onus of prove obviously rested on the applicant to prove both monetary contributions made and non-monetary contribution in acquisition and developments of the listed properties. The onus of proof however is subject to a presumption of law under Section 14 of Matrimonial Properties Act and it provides;

There is a presumption of law) that 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 interest in the matrimonial property are equal."

66. The Constitution of Kenya 2010 under Article 45(3) states that;

"Parties to a marriage are entitled to equal rights at the time of marriage, during the marriage and at the dissolution of marriage.

"The constitutional provision does not however equate equal rights to a 50/50 sharing of assets but rather to the rights to be treated equally and fairly. The statute (Matrimonial Property Act) provide under Section 7 that;

"Ownership of 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."

67. The law therefore provides that in the event of divorce, the matrimonial property is divided between the spouses according to the contribution of each spouse. Section 2 of the same statute defines "contribution" as monetary and non-monetary and includes; domestic work and management of the matrimonial home, child care, companionship, management of family business or property and farm work.
68. In the supreme court decision of The Supreme court of Kenya in Petition No 10 of XXXX Joseph Ombogi Ongetoto v Martha Bosibori Ogentoto [2023] agreed with Echaria case on the principles applied for distribution of matrimonial property. It stated thus:
- ‘[78] to our minds the finding in Echaria was essentially that a spouse does not acquire any beneficial interest in matrimonial property by fact of being married only and that specific contribution has to be ascertained to entitle such a spouse a share of the property.’
69. The court went on to emphasize that the spouse seeking a share in the matrimonial property has to prove the extent of his or her contribution to the acquisition or development of the property.
70. From the foregoing therefore, it is demanded of the court to give due consideration to both the monetary and non-monetary contribution of spouses in a marriage. Where therefore, as herein, the disputed property is not registered in the joint names of both spouses but in the name of only one, beneficial share of each spouse would depend on his/her proven proportions of financial contribution, either direct or indirect, towards acquisition and/or development thereof. To succeed in this case therefore, the applicant has to demonstrate through evidence that she contributed, directly or indirectly, towards the acquisition and/or development of the property in dispute.
71. I now turn to consider whether the Applicant made contribution in the development and acquisition of the matrimonial properties. As set out in the authorities cited above, to discharge this burden, the Applicant has to establish that she made direct and/or indirect contribution towards acquisition and/or development of the properties in dispute.
72. Although the parties disagree on various factual matters, certain facts are not in dispute. The parties are in agreement that they got married in 1976 under the African Christian Marriage and Divorce Act (Cap 151), that they lived together as husband and wife for approximately 46 years until their marriage was dissolved on 31st May 2022, that they were blessed with three children during the marriage, and that the Respondent was employed by Kenya Railways Corporation while the Applicant was initially employed as a public health educator before becoming a housewife.



73. The parties also agree that the properties in dispute were acquired during the subsistence of their marriage and were registered in the sole name of the Respondent. Another point of unanimity is that at the time of marriage, neither party owned any property, and that their first matrimonial home was established at Langas Phase 1/XXX before they moved to Eldoret Municipality Block 10/XXXX.
74. The Applicant has not disputed that the Respondent, through his employment with Kenya Railways Corporation, was the primary income earner for most of their marriage. However, what she insists upon is that she made substantial direct financial contributions during her employment years and through various business ventures she managed throughout their marriage.
75. Specifically, the Applicant testified that from 1976 to 1983, she pursued a career as a public health educator at the Ministry of Health, using her earnings to support the family and contribute to property acquisition. She states that she never stopped working voluntarily but was forced by the Respondent, who strongly opposed her employment and resorted to extreme measures such as burning her work clothes and shoes to coerce her into assuming the role of a housewife.
76. The Applicant further testified that she managed diverse business ventures including hotels, butcheries, a cereal shop, and a motor vehicle spare parts business. She particularly highlighted operating a Matatu business under registration number XXX XXXX and personally undertaking the registration of the family business "Mussy Commercial Agency" on 3<sup>rd</sup> October 2001, later renamed to "Muskat Commercial Agency" on 30<sup>th</sup> August 2004.
77. On his part, the Respondent argues that he solely contributed to the acquisition and development of all properties using funds from his employment and businesses, maintaining that the Applicant, having been a housewife for most of their marriage, contributed absolutely nothing towards property acquisition.
78. From my examination of the evidence presented, I note that while the Applicant has made assertions about her various business ventures and employment, the documentary evidence supporting these claims is limited. The Applicant did not produce comprehensive records such as employment contracts, salary slips, business registration certificates, bank statements showing business profits, or receipts evidencing substantial financial contributions to specific property acquisitions.
79. The Respondent's position is supported by the fact that most the disputed properties are registered in his name, which provides prima facie evidence that he was the purchaser. The Applicant has not challenged the Respondent's assertion that he was the primary breadwinner or disputed the source of funds used for major property acquisitions. Therefore, from the totality of the evidence as presented, I have come to the conclusion that the aspect of direct contribution towards acquisition of the matrimonial estate was not well established.
80. Notwithstanding the above findings on direct contributions, it cannot be denied that the properties were acquired and developed during the subsistence of a 46-year marriage. The Applicant was a spouse when the properties were acquired and developed, and in the absence of conclusive evidence to the contrary, she undoubtedly made significant indirect contributions. During the period from 1976 to 2022, spanning 46 years of marriage, the Applicant gave birth to and raised three children. There is no evidence that she did not offer them love, care, and guidance as a mother should. The Applicant provided the Respondent with companionship, emotional support, and maintained the matrimonial home, creating an environment conducive to the Respondent's professional advancement and property acquisition activities.



81. The Applicant's role in managing household affairs, including domestic work, child care, and providing companionship, as defined under Section 2 of the *Matrimonial Property Act*, constitutes substantial non-monetary contribution that must be recognized and valued. These contributions undoubtedly gave the Respondent peace of mind and stability, enabling him to focus on his career and business ventures.
82. Additionally, the evidence shows that the Applicant was actively involved in the management of family enterprises and properties. Even if her direct financial contribution cannot be quantified with precision, her administrative role, oversight of tenants, and general management of family affairs contributed to the preservation and enhancement of the matrimonial estate.
83. The Supreme Court in *JOO v MBO* (supra) emphasized that both direct and indirect contributions must be considered, noting that indirect contributions such as homemaking, child care, and companionship are valuable and should not be underestimated in property distribution.
- “Equity was an important principle when it came to matrimonial property since what was fair as it related to equity was not a question of the quantitative contribution by each party but rather the contribution by any party in any form, whether direct or indirect. Any substantial contribution by a party to a marriage that led to the acquisition of matrimonial property, even though such contribution was indirect, but had in one way or another, enabled the acquisition of such property amounted to a significant contribution. Such direct or indirect acts included:
1. Paying part of the purchase price of the matrimonial property.
  2. Contributing regularly to the monthly payments in the acquisition of such property.
  3. Making a substantial financial contribution to the family expenses to enable the mortgage installments to be paid.
  4. Contributing to the running of and welfare of the home and easing the burden of the spouse paying for the property.
  5. Caring for children and the family at large as the other spouse worked to earn money to pay for the property.”
84. Having established that both parties made contributions toward the matrimonial property, albeit in different forms and proportions, I must now determine the quantum of each party's contribution.
85. While it is clear that the Respondent bore the primary financial burden of acquiring and developing the properties through his employment income, the Applicant's 46 years of indirect contributions cannot be dismissed as insignificant. Her role in maintaining the home, raising children, and providing the stability necessary for the Respondent's professional success represents substantial non-monetary contribution.
86. However, the evidence does not support the Applicant's claim to equal contribution. The substantial financial outlay required for acquiring multiple properties across Eldoret, the continuous development and maintenance costs, and the absence of compelling evidence of significant direct financial contribution by the Applicant, suggests an imbalance in direct contributions.
87. In the circumstances, doing the best I can, based on the evidence before me, I conclude that while the Respondent made the lion's share of direct financial contributions, the Applicant made significant and



valuable indirect contributions over the 46-year marriage that entitle her to a substantial share of the matrimonial property.

88. Having determined the respective contributions of the parties, I find it proper to address the specific allocation of the matrimonial home at Eldoret Municipality Block 10/XXXX. This property has served as the primary matrimonial home where the Applicant nurtured the family for over two decades. The evidence demonstrates that the Applicant has been the primary occupant and caretaker of this property, particularly following the Respondent's retirement and the breakdown of their marriage. She has been collecting rent from tenants and maintaining the property, establishing her continuing connection to this home.
89. Given the Applicant's age, her 46 years of domestic contribution to the marriage, and the need to ensure her security and dignified settlement in her twilight years, this Court finds it appropriate and just that the matrimonial home at Eldoret Municipality Block XX/XXXX be allocated to the Applicant for her exclusive occupation and residence. This allocation recognizes not only her indirect contributions but also serves the constitutional imperative of ensuring equal treatment at dissolution of marriage. The home represents the physical manifestation of her life's work in nurturing the family and should remain her sanctuary. However, this allocation is strictly limited to occupation rights and does not extend to rental income from any portions of the property that may be let out to tenants, which rental income shall continue to be distributed according to the parties' respective beneficial interests as determined herein. The Respondent shall receive compensation for his share of this property from other matrimonial assets in the distribution.
90. In my considered view the lengthy duration of the marriage, the Applicant's consistent indirect contributions, her role in family management, and the principles of fairness and constitutional equality, I assess the Applicant's overall contribution at 40% of the net matrimonial property.
91. From the foregoing analysis the following orders do abide:
  - a. A declaration is hereby issued that the Applicant is entitled to Forty percent (40%) beneficial interest in the matrimonial property while the Respondent is entitled to sixty percent (60%) beneficial interest.
  - b. The matrimonial home at Eldoret Municipality Block XX/XXXX is hereby allocated to the Applicant for her exclusive occupation and residence in recognition of her domestic contributions and to ensure her security and dignified settlement, but excluding any rights to rental income which shall be distributed according to the parties' respective beneficial interests as determined herein.
  - c. The property at Langas Phase 1/XXX currently occupied by one of the parties' children forms part of the matrimonial estate and shall be distributed according to the percentage allocation herein determined, without prejudice to any subsequent arrangements the parties may make regarding their child's occupation.
  - d. The parties are at liberty to agree on the mode of distribution of the remaining matrimonial properties, whether through sale and division of proceeds according to their respective shares, or through allocation of specific properties to each party equivalent to their beneficial interests.
  - e. Either party may elect to purchase the other party's beneficial interest in any of the matrimonial properties at current market value as determined by a qualified valuer. Where such election is made:



- i. The purchasing party shall obtain a professional valuation of the property from a qualified registered valuer.
  - ii. The purchasing party shall pay the other party their percentage share (40% for the Applicant, 60% for the Respondent) of the current market value as determined by the valuation.
  - iii. Upon payment of the buyout amount, the purchasing party shall acquire full beneficial interest in the property.
  - iv. The parties shall execute all necessary documentation to effect the transfer.
  - v. That there might be a necessity for a forensic audit of the rentable asset by a financial forensic expert to determine the case receivables and expenditures and as a consequence to crystalize the laid down protocol of distribution at a ration of 40% : 60% being the sharing model within the Applicant, Plaintiff, and Defendant /Respondent
- f. Each party shall bear their own costs of these proceedings.

92. Orders accordingly.

**DATED AND DELIVERED AT ELDORET THIS 18<sup>TH</sup> DAY OF JULY 2025**

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**R. NYAKUNDI**

**JUDGE**

In the Presence of:

Josephine Musyimi

John Bosco Musyimi

Sidi for the State

