



**PMM v MGM (Civil Suit 81 of 2019)
[2025] KEHC 9537 (KLR) (Family) (3 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 9537 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
CIVIL SUIT 81 OF 2019
HK CHEMITEI, J
JULY 3, 2025**

BETWEEN

PMM APPLICANT

AND

MGM RESPONDENT

JUDGMENT

1. This judgment relates to the Amended Originating Summons dated 17th March, 2023 filed by the Applicant, PMM seeking for ORDERS THAT:
 1. A declaration be issued that the suit properties in the schedule below were acquired by the joint funds and efforts of the parties herein during the subsistence of their marriage and registered in the name of or in the position of the Respondent and the same are jointly owned by the Applicant and the Respondent.



No.	Item	Description	Registered Under
1.	Plot at Kahawa Sukari	Matrimonial home.	Respondent's names.
No.	Item	Description	Registered Under
2.	M/V Reg. No. KCH XXXXZ	Matrimonial vehicle.	Respondent's names.
3.	M/V Reg No. KCJ XXXX	Matrimonial vehicle.	Applicant's names.
4.	M/V Reg No. KCW XXXX	Matrimonial vehicle.	Respondent's names.
5.	2 (50X100) Parcels Mavoko Block No. 3/XXXX & 3/91XXXX	Matrimonial land.	Respondent's names.
6.	1 (50x100) Parcels Mavoko Block No. 3/XXXX	Matrimonial land.	Applicant's names.
7.	Development of both Residential & Commercial Plots at Meru County.	Matrimonial assets.	Joint venture.

2. The said properties be distributed equally between the Applicant and the Respondent.
3. The Respondent, herself, her agents and or servants be restrained from alienating, encumbering or in any other way disposing of the suit property.
4. The Respondent be compelled to release personal items that belong to the Applicant which were left in their matrimonial home upon their separation; which include:
 - i) The Applicant's birth certificate.
 - ii) The Applicant's Kenya Certificate of PriM School certificate.
 - iii) The Applicant's Kenya Certificate of Secondary School certificate.
 - iv) Bank receipts showing the Applicant's contribution towards shopping, school fees payment construction, bills like water, electricity, security, house help, fueling family car.
 - v) Applicant's official clothes, outfits, shoes, laptop, phone, watch shoes cost is equivalent to Ksh.800, 000.00.



- vi) An original sale agreement, title deed and transfer documents of the property known as 1 (50 x 100) parcel Mavoko Block No. 3/XXXX.
 - vii) The Applicant's appointment and promotion letters.
 - viii) The Applicant's bank cards, NHIF and NSSF cards.
5. The Respondent be condemned to pay the costs of this application and incidentals thereto.
 6. After close of the pleadings the court directed the matter to proceed by way of viva voce evidence. Both parties testified and did not call any witnesses.
 7. Subsequently they filed their written submissions.
 8. The court shall proceed to summarize the oral evidence as hereunder.

Plaintiff /Applicants Evidence

9. The plaintiff testified and relied on his pleadings on record as well as the documents in support.
10. He said that he married the Defendant sometimes in the year 2011 which was dissolved via a decree absolute.
11. That during their marriage they lived at Zimmerman in a rented house before moving to Kahawa Sukari where they had purchased and built the matrimonial home. That they purchased the property which was then an allotment and was later registered in the names of the Defendant and her mother.
12. He testified that he contributed a total of Kshs. 2 million in its acquisition.
13. When cross examined, he said that the Defendant took away his personal belongings including his academic certificates, bank documents and other legal documents while he was away in Kwale.
14. He further testified that he married the Defendant who had one child but they got a child of their own.
15. He said that the Defendant then moved to Meru County where she works with the County Government.
16. On the purchase of the matrimonial property, he said that the same was by way of cash. The documents for construction of the house were however taken by the Defendant while he was away.
17. He further said that he knew the Defendant's mother who was a business lady and he was not aware of a company by the name "Cut Above Enterprises".
18. According to him his relationship with the Defendant deteriorated when she moved to Meru.
19. He admitted during cross examination that he never reported to the Police the disappearance of his academic and other personal documents which he alleged were taken by the Defendant.
20. He further said that he had placed all his evidence of payments including the pay slips to the court for consideration.
21. As regards the three motor vehicles he said that it was not paid by the defendant alone but he did pay the same for instance KCJ XXXX which he purchased from one M and he paid in full. He paid the same through the Respondent after withdrawing the liquid cash.
22. He also denied selling the car to CM who was Respondent's workmate.



23. He said that the money which was used to purchase these properties were obtained through the family account.
24. When reexamined he denied doing any joint business with his mother in-law nor the sister in-law.
25. He said that there was an allotment letter only when they purchased the land at Kahawa Sukari in which they built the matrimonial home.
26. He said that he worked at a parastatal and he earned good salary to afford the purchase and development of property in question. The Respondent as well worked with the Ministry of [Particulars Withheld].
27. As regards the land in Katani he said that he purchased the same when they were not married and it was therefore not available for sharing out as a matrimonial property.

Defendant/Respondent's Case

28. The Respondent also relied on her pleadings before the court and the documents in support.
29. She said that she worked in the Ministry of [Particulars Withheld] as an [Particulars Withheld] earning a salary of Kshs. 30,000 per month.
30. When cross examined, she said that she had not produced the sale agreements for the purchase of the properties. That at the time of acquiring the property the marriage had not been dissolved.
31. She said that the property was a family one and that she contributed more than her mother.
32. On the question of the car and Mr. M she said that he had purchased the car from the Plaintiff but there was no evidence produced.
33. Concerning the properties number 91XXXX and 91XXXX Mavoko she said that the same were purchased before their marriage.
34. She however did not produce any evidence of payments to Cut Above Enterprises which according to her was a cereal dealing business entity.
35. She said that motor vehicle KCW XXXX was not hers and she does not know when it was purchased although it is registered in the name of her sister.
36. When reexamined she said that the Kahawa Sukari home was bought in 2015, constructed in 2016 and finalised in 2021.
37. She further said that the Katani plots were purchased after their marriage in 2011.
38. She said that her mother Sellasio and her sister L are business persons of repute.
39. She said that she purchased motor vehicle KCJ XXXX from Mr. M alone. KCW XXXX on the other hand belonged to her sister L.
40. At the close of the evidence the parties were directed to file their written submissions.
41. The Applicant has filed written submissions dated 11th March, 2025 placing reliance among others on the following:
 - a. W. K. vs J. K. G [2015] eKLR where the court held as follows: “Where the disputed property is not so registered in the joint names of the spouses but is registered in the name of one spouse, the beneficial share of each spouse would ultimately depend on their proven respective proportions of financial contribution either direct or indirect towards the acquisition of the



property, However, in cases where each spouse has made a substantial but unascertainable contribution, it may be equitable to apply the maxim ‘equality or equity’ while heeding the caution of Lord Pearson in *Gissing vs Gissing* [1970] 2 All ER 780 at page 788.”

- b. *PME vs Priscilla Njeri Echaria* [2007] eKLR where the court held as follows: “Where the property in dispute is registered in the name of one spouse, the beneficial interest of each spouse would depend on the financial contribution by each spouse, either directly or indirectly. The court held: “Where the disputed property is not so registered in the joint names of the spouses but is registered in the name of one spouse, the beneficial share of each spouse would ultimately depend on their proven respective proportions of financial contribution either direct or indirect towards the acquisition of the property. However, in cases where each spouse has made a substantial but unascertainable contribution, it may be equitable to apply the maxim “Equality is equity” while heeding the caution by Lord Pearson in *Gissing v Gissing* (supra) at page 788 paragraph c that: No doubt it is reasonable to apply the maxim in a case where there has been very substantial contributions (otherwise by way of advancement) by one spouse to the purchase of property in the name of the other spouse but the portion borne by the contributions to the total purchase price or cost is difficult to fix. But if it is plain, that the contributing spouse has contributed about one – quarter, I do not think it is helpful or right for the court to feel obliged to award either one – half or nothing.”
42. The Respondent has filed written submissions dated 18th March, 2025 placing reliance as well on the following among others:
- a. *O. M vs M. N. K* (2017) eKLR where the court stated as follows: “This is a suit for division of matrimonial property... The prerequisites are that the parties ought to have been in a marriage, to have had acquired matrimonial property during coverture and for their marriage to have been dissolved as at the point orders on division of matrimonial property are being made...”
 - b. *T. M. W vs F. M. C* (2018) eKLR where the court opined as follows: “... 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.”

Analysis And Determination

43. I have carefully considered the Originating Summons, the responses thereto the oral evidence and the rival submissions filed by the parties.
44. The issues of determination, as crafted by the parties, are as follows:
- a. Whether the suit properties should be declared as jointly owned by the Plaintiff and the Defendant.
 - b. Whether the said suit properties should be distributed equally between the Plaintiff and the Defendant?
 - c. Whether the Defendant herself, her agents and or servants be restrained from alienating, encumbering or in any other way disposing of the suit property.
 - d. Whether the Defendant should be compelled to release the Plaintiff’s personal items at their matrimonial home?
 - e. Whether the suit properties constitute matrimonial properties?



- f. What contribution if any did the Applicant make in the contribution of the matrimonial property and how should it be shared out?
 - g. Whether the Respondent has withheld any personal items and other academic certificates belonging to the Applicant.
45. From the testimony above, the points of convergence between the parties are evident. Both agree that they got married in the year 2011 and separated in 2015. Divorce proceedings were filed later, and a decree absolute was issued.
46. Both parties were employed at the time of marriage. Paul worked with the Rural Electrification Authority (REA) and M worked in the Ministry of [Particulars Withheld] and later at Meru County Government. Both acknowledge 1 child born during their marriage. They also refer to Hillary, a child M had before marriage.
47. They both refer to the Kahawa Sukari house and agree that it was acquired around 2015 – 2016 and constructed between 2016 – 2021. Both confirm that there was no prenuptial agreement and that each party acquired some properties individually. Both mention 3 vehicles namely KCJ XXXX, KCH XXXXZ and KCW XXXX.
48. The parties disagree on the following issues:
- a. The Kahawa Sukari property where the Plaintiff says that he contributed Kshs. 2 million towards its purchase while Defendant claims that she acquired the property alone after their separation and that the title is in hers and her mother's name. She further avers that the plaintiff never lived on this property.
 - b. The Plaintiff on the other hand says that the construction was done while they were married and living together but Respondent disagrees with this position and states that the construction began after their separation and was completed in 2021.
 - c. On bank accounts the Plaintiff claims to have deposited cash into bank account and that he was sometimes paid in cash by his employer. The Defendant disputes his contribution, claiming that payments came from Meru County salary and bonuses. The Plaintiff has not provided any documentary evidence in this regard while the Defendant has submitted bank statements.
 - d. As regards Vehicles, the Plaintiff states that motor vehicle registration number KCJ XXXX is registered in his name, as he paid for it in cash and the Defendant only facilitated. The Defendant disputes this line of argument and insists that the receipts are in her name and that the Plaintiff refused to have it transferred. The same however is a subject of an ongoing court dispute. The parties disagree on who funded its purchase and who owns it.
 - e. KCH XXXXZ the plaintiff says that he contributed to its purchase and that the documents were in the house. The Respondent says that she bought it for Kshs. 1.2 million and court gave her possession orders.
 - f. KCW XXXX is registered in L's name. L is M's sister. The Plaintiff says that it was family property bought using family money and he does not know who owns it now. M says that it belongs to her sister, L who bought it in 2019 and the plaintiff had no involvement in it. There seems to be a dispute over whether L was used as a proxy to shield the property.
 - g. In respect to Mavoko plots the Plaintiff states that the same were acquired during marriage. The Defendant said that the plots were acquired before the marriage hence not matrimonial



property and has provided copies of the titles to support her assertion. The parties disagree on the date of acquisition and status as matrimonial property.

- h. In terms of the duration of cohabitation the plaintiff states that they were cohabiting at Kahawa Sukari. The Defendant denies ever living with him in Kahawa Sukari. She says that they lived together in Zimmerman only. There is inconsistency in their cohabitation timeline.
49. Further, the Respondent provided some bank statements and official records while the Defendant acknowledges not producing many documents e.g., bank statements, sale agreements, vouchers etc.
50. Both parties mention Defendant's sister, L, and mother, S whom the Plaintiff claims were used to hold matrimonial property while the Respondent says they genuinely helped or owned the assets. She further claimed that her sister runs Above Cut Enterprises, which contributed financially while the Plaintiff said he doesn't know the company.
51. In summary, the agreed facts are that they married in 2011 and separated in 2015, their divorce was finalized in 2020, they have 1 biological child together, their employment history and the property names and titles. The disputed facts are on the ownership/ contribution to the Kahawa Sukari property, ownership and purchase of the vehicles, status and acquisition of the Mavoko plots, the plaintiff financial and non – financial contribution and cohabitation at Kahawa Sukari.
52. The *Matrimonial Property Act*, No. 49 of 2013, at Section 2, defines matrimonial home 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 6 (1) of the *Matrimonial Property Act*, No. 49 of 2013 defines matrimonial property as the matrimonial homes, household goods and effects in the matrimonial home or homes or any immovable and movable property jointly owned and acquired during the subsistence of the marriage.
54. Section 7 of the *Matrimonial Property Act* No. 49 of 2013 states 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.
55. Section 17 (1) of the *Matrimonial Property Act* No. 49 of 2013 states that a person may apply to a court for a declaration of rights to any property that is contested between that person and a spouse or a former spouse of the person.
56. The Supreme Court of Kenya in Petition No. 10 of 2020 JOO v MBO [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.”

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. It stated:

“[83] the guiding principle should be the apportionment and division of matrimonial property may only be done where parties



fulfill their obligation of providing what they are entitled to by way of contribution.”

57. In light of the foregoing, I think it is fair to suggest that the Kahawa Sukari property is a matrimonial home as it was obtained during coverture and its construction has not been disputed was undertaken during the period.
58. The parties did not produce any sale agreements and I take it that they both knew its contents and therefore it remains a matrimonial property as outlined above and ought to be shared equally. Although it is registered under the names of the Respondent and her mother the Applicant has equal rights over it as it was his matrimonial home.
59. Needless to state that the Respondent’s mother chose not to defend her position and rights over the suit property. She did not file any opposing document to that effect.
60. There was no evidence on the Meru properties if any and I think it is only fair to leave them at that.
61. The Mavoko properties namely Mavoko Town Block 3/XXXX and 91XXXX are registered under the Respondent’s names. The titles produced indicates that they were each registered on 19th May 2011. This was the period when the marriage was subsisting.
62. The parties did not produce any sale agreements indicating their purchase and, in the premises, I find that since they were acquired during coverture, they constitute matrimonial property. The Respondent was not able to prove otherwise.
63. As regards motor vehicles the three of them had different versions and registered under different names so far. I find that KCH XXXXZ and KCW XXXX ought to remain in their respective registered persons names whether the Respondent or her sister.
64. KCJ XXXX however should be shared out as part of the matrimonial assets. The paperwork’s and the explanation in my view was satisfactory and it all points out to the fact that they each participated in its acquisition.
65. A Mr. CM who allegedly purchased the vehicle was not available to defend his part. He was closely associated with the Respondent as they worked together.
66. I think I have stated so much to show that although they may not have been a clear 100% evidence of each of the party’s contribution all the evidence suggest that the assets were obtained during the subsistent of their marriage. Ordinarily nobody will keep evidence to use against each other in the event of such misunderstanding. It is expected that marriage shall be rosy always and hence the need for the court to look intently at the party’s level of contribution.
67. In the case at hand both of them worked and earned some reasonable income although it appears the Plaintiff may have earned more by virtue of his salary.
68. The Respondent on the other hand made some meaningful contribution as she was also employed. There was no much evidence from the businesses which were runed by the Respondent’s mother and sister. Her salary and loans contributed in a sense to the acquisition and improvement of the properties.
69. In the premises I find and hold that:-
 - (a) Ruiru Kiu Block 3/3XXXX (Kahawa Sukari) plot constitutes matrimonial property and the same shall be shared out on a 50:50 basis between the Applicant/ Plaintiff and the Respondent.



- b. Mavoko Town Block 3/XXXX and 91XXXX constitutes matrimonial property and shall be shared out equally between the Plaintiff/Applicant and the Respondent /Defendant.
- (c) The parties in compliance with the above directives shall be at liberty to value the same within 90 days from the date herein vide a professional registered valuer and buy each other out and in default dispose them in open market and thereafter share out equally the proceeds less liabilities if any.
- (d) Motor vehicles registration numbers KCH XXXXZ and KCW XXXX does not constitute matrimonial property.
- (e) Motor vehicle registration number KCJ XXXX is a matrimonial property and the same shall be shared out equally between the Plaintiff/Applicant and the Defendant /Respondent.
- (f) The Defendant/Respondent her agents and or servants pending effecting this judgement decree shall not sale, charge dispose or in any other way adversely deal with the matrimonial properties mentioned herein to the detriment of the Plaintiff/Applicant.
- (g) Being a family matter each party shall bear their respective costs.

DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 3RD DAY OF JULY 2025.

H K CHEMITEI

JUDGE

