



**RJ v MKC alias MKL (Matrimonial Cause E006 of 2024)
[2025] KEHC 12532 (KLR) (15 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 12532 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MATRIMONIAL CAUSE E006 OF 2024
RN NYAKUNDI, J
SEPTEMBER 15, 2025**

BETWEEN

RJ PLAINTIFF

AND

MKC ALIAS MKL DEFENDANT

JUDGMENT

1. The Plaintiff moved this Court vide Originating Summons dated 22nd October 2024 brought pursuant to Article 45(3) of *the Constitution* of Kenya 2010, section 17 of the *Matrimonial Property Act* 2013, section 13 of the *Marriage Act* 2014, sections 1A, 1B, 3 & 3A of the *Civil Procedure Act* seeking the following orders:

1. That a declaration be and is hereby issued declaring that the Applicant/Plaintiff is entitled to whole share or such other share as the Court may award of the properties (movable and immovable) acquired by the Plaintiff prior to and/or during the subsistence of their marriage and that the Defendant holds title, interest, ownership and/or possession of the said properties in trust for the Plaintiff/Applicant in their respective shares as the legal owners and cestui que trust respectively namely:
 - a. A portion measuring 0.25 of an acre identified for the Defendant by his late mother comprised in L.R No. Ngeria/Megun Block 4 (Saina)/xx which portion is deemed as matrimonial property.
 - b. A portion earmarked for the Defendant comprised in L.R No. Ngeria/Megun Block 4 (Saina)/xxx which portion is deemed as matrimonial property.
 - c. House-Hold Items and all other properties acquired during the subsistence of marriage and personal effects full details whereof are well within the Defendant/Respondent’s knowledge.



2. That a declaration do issue to the effect that the above matrimonial properties be shared according to the contribution made by the parties towards their development and/or improvement or in any other ratio as this Honourable court may deem just and expedient to order/direct.
 3. That a declaration do issue to the effect that the household items be released to the Applicant/Plaintiff and/or that the same be shared in any ratio as this Honourable Court may deem just and expedient to order.
 4. That in the alternative to all the above, an order be and is hereby issued directing that the Respondent/Defendant is not entitled to any share of the above said properties as enumerated in (1) (a-c) above.
 5. That in the alternative to all the above, an order do issue directing that a valuation be carried out on all the above properties and a valuation report be filed in court by a mutually acceptable valuer after which the court will apportion what is payable to each party and subsequent to the said valuation, the Defendant be ordered to pay to the Plaintiff her entitlement and/or such other share as the court may order in the best interest of justice.
 6. That upon the grant of any and/or all of the foregoing, a permanent injunction do issue restraining him either in person or through his servants, agents and/or employees from interfering with the Plaintiff's lawful enjoyment and quiet possession of the share awarded to her by this Court
 7. That such other and/or further orders be granted as the Court may deem fair and expedient in the circumstances.
 8. That the Defendant be condemned to pay costs and interest to the Plaintiff.
2. The Summons were supported by the Affidavit dated 22nd October 2024 sworn by RJ the Plaintiff herein who averred as follows;
- a. That on or about 29th December, 2005, the Defendant and I solemnized our union as husband vide the provisions of Cap 151 (now repealed).
 - b. That the Defendant and I were blessed with two (2) issues of our said union.
 - c. That the Defendant and I settled in our matrimonial home developed on L.R No. Ngeria/Megun Block 4 (Saina)/xxx after our wedding.
 - d. That the Defendant was also allocated land measuring 0.25 of an acre comprised in L.R No. Ngeria /Megun Block 4 (Saina)/xxx by his late mother on which portion we jointly contributed either directly or indirectly to putting up rental premises.
 - e. That our marriage was dissolved vide Eldoret Chief Magistrates Court divorce cause number 81 of 2022.
 - f. That I confirm that the Defendant and I jointly developed and or improved our matrimonial home on L.R No. Ngeria/Megun Block 4 (Saina)/xxx which is where we have called home until 18th October, 2024 when the Defendant forcefully ejected the issues of our marriage and I.
 - g. That prior to evicting me and our children as the above, the Defendant had earlier removed the main door leaving our children and I exposed to danger depicting him as an inhumane individual.



- h. That the Defendant/Respondent's share in the above parcel of land was identified by his late mother before her demise on which portion we have resided since our marriage on 29th December 2005.
- i. That the Defendant/Respondent began an intimate relationship with one Dorcas Rop in the year 2009 and moved out of their matrimonial home although he used to occasionally visit.
- j. That the Defendant currently resides with the said mistress; Dorcas Rop at Kipkenyo and not in the matrimonial home.
- k. That the Defendant has severally threatened to evict our children and I from our matrimonial home, a threat he made good on 18th October, 2024.
- l. That I also acquired household items which I urge this Honourable court to apportion to us according to our contribution full details of which shall be adduced at the hearing hereof.
- m. That our marriage/union having been dissolved, it is only fair and just that the properties I acquired solely and/or with minimum contribution on the part of the Respondent/Defendant be distributed in accordance with our respective contributions and/or as shall be quantified by this Honourable Court in the best interest of justice.
- n. That if not for my financial contribution, the suit properties will not have been acquired as I solely contributed to their acquisition and/or development.
- o. That the properties captioned under paragraph 1 (a)-(c) of the Originating Summons are currently in the sole possession and/or control of the Respondent/Defendant to my detriment.
- p. That in the above premises, I have been forced to rent a house albeit the financial contribution I made towards the development our matrimonial home.
- q. That I am apprehensive that the Respondent/Defendant upon being served with these pleadings may dispose off the said properties without my knowledge to my detriment and of our child.
- r. That I am now facing the danger of losing all my past investment and I will suffer great injustice should the Respondent/Defendant retain the sole occupation, possession and/or control of the said properties which were acquired by my sole efforts.
- s. That I pray that the said properties be shared proportionately according to our contribution and/or in such other manner as this court may deem fit and just and/or the same be sold and the proceeds thereof shared proportionately.
- t. That the Respondent/Defendant's continued enjoyment of our matrimonial home is prejudicial to me as the said house was solely developed by me.
- u. That the issues of our marriage and I are currently destitute hence rendering appropriate orders necessary in the best interest of justice.
- v. That unless appropriate orders are issued, our children and I stand to suffer irreparable loss and damage as I may lose my beneficial interest in the suit parcel of land albeit my contribution thereto either directly or indirectly.



Response to the Originating Summons

3. The Defendant/Respondent responded to the Plaintiff's Originating Summons vide a Response to the summons dated 7th January 2025 through his Learned Counsel Mr. Kiptoo who stated as follows:
 - a. The Respondent states that save as herein after admitted, he denies each and every allegation set out in the summons.
 - b. That the Applicant is not qualified for grant of prayers sought in the summons dated 22.10.2024 in amongst others that: -
 - a. The Applicant has not specified the property she alleges to be matrimonial assets.
 - b. The Respondent avers that the portion of land stated in paragraph 1a in the Summons referred to as Ngeria/Megun Block 4/xx is not matrimonial land since it is not registered in either of the party's name and further that is still a subject of succession hence it is not a subject of the proceedings herein.
 - c. The property Ngeria/Megun Block 4/xxx further belongs to a third party who is not a part of this matter, it will be wrong to ventilate it before the Honourable Court.
 - d. The Respondent avers further that contents of paragraph 1c of the summons are denied in toto, that being the case, the Applicant shall be put to strict proof at the hearing hereof.
 - e. The Respondent states that the contents of paragraph 2, 3 and 4 of the Summons are denied vehemently, as a matter of fact, he who alleges must prove, the Applicant has not proved the contributions she made, the inventory of the household items in question, nonetheless, the applicant is guilty of non-disclosure and or non-particularization.
 - f. That paragraph 5 of the Summons cannot be sustained in that an amorphous prayer of valuation does not form a basis of a matrimonial property when the properties have not been specified and that the specified ones are subject to inheritance hence effectively in the name of a deceased person whose estate is not a party to the proceedings herein.
 - g. That the Respondent avers that by failing to satisfy the ingredients prove her case herein and the Respondent prays that the summons dated 22.10.2024 be dismissed with costs.
 - c. The Respondent admits the jurisdiction of the Honourable Court.
4. The Defendant also filed a List Statement dated 7th January 2025 where he stated as follows;
 1. That with the assistance of my advocate on record, I have read and understood summons dated 22.10.2024 and therefore wishes to respond as follows;
 - a. That the Applicant did not participate in the construction of the alleged matrimonial property home, in fact, the alleged house was built by my mother for my use as a young man, further, my first wife the late Beneta Jepkemboi who died in 1997 and buried next to the said home/house. Additionally, my eldest daughter Doris Chebichii was born and raised therein, and had been living therein before she relocated abroad. Contained in my list of documents are copies of the photographs of me and my first wife in our wedding day in 1994.



- b. That I can confirm that the Applicant has not been occupying the stated house, in fact, she has never done or improved its status whatsoever on the short stint she lived therein noting that she had no income or business, she was unemployed and was a house wife.
- c. That on 04.10.2024, the Applicant broke the lock to the said house, gained access and converted it into a liquor drinking den with a male adult stranger, an act I was informed by my relatives and on confronting them, the male character in her company attempted to attack me with a sword and a rungu which prompted me to raise an alarm attracting the members of the public and some of my relatives who overpowered him. I reported at Kapsaret Police Station and he was booked under OB NO. xx.05.10.2024.
- d. That I can confirm that the alleged matrimonial home/house is no longer in existence, the same was demolished by members of the public and other family members on the day I had gone to report to Kapsaret Police Station who I came to know were angry with the applicant for converting my house into a drinking and prostitution den.
- e. That I did not forcefully eject the Applicant as alleged to the contrary she escaped on her own accord after getting embarrassed of what she had done on 04.10.2024, further, the Applicant is not sincere in stating that I chased her with our children in amongst others that on the alleged date, all our children were in their respective boarding schools and thus practically impossible for them to be there.
- f. That I am aware the applicant is attempting to disguise a succession matter into a matrimonial property whereas she is not a beneficiary or an heir apparent to the estate of the late Annah Chepkering Chemwor who is my deceased mother.
- g. That I am alive to the fact that the applicant has not moved on from our divorce and has persistently triggered the court through frivolous vexatious and fictitious applications as demonstrated by the averments.
- h. That the Applicant is misleading the court by stating that I have severally threatened to evict her and the children from the alleged matrimonial home a threat she alleges I made real on 18.10.2024, however and to contrary, I have been living with our eldest son who escaped from the custody of the applicant a very long time ago, further, the applicant has not been living in the alleged matrimonial home, the children court in Eldoret being children matter no. 106/2014 delivered a ruling on 01.08.2014 compelling the applicant to provide shelter to the two minors herein, thus she cannot again claim shelter from me whereas the court order was clear, nonetheless.
- i. That the Applicant is a wealthy business woman with her own house which she has been living with our youngest daughter since 2014 and even before the children matter was instituted, in fact, she has been living on her own and even purchased several properties in her name one of which is from my cousin Timothy Kurgat.
- j. That I wholesomely been taking care of our children needs well beyond what was ordered by the children court hence I haven't acquired any property in pretext of matrimonial assets then, I owned it before I married the applicant and to some extent after or during the pendency of our divorce, whichever the case as it may, the applicant has to prove any contribution she made in the stated property she alleges to warrant the intervention of the Honourable court.



- k. That I am alive to the fact that any property in the name of a deceased person shall not be entertained without proper letters of representation.
 - l. That I am alive to the fact that the photographs that the applicant has attached herein were taken when our relationship was still blossoming as clearly captured, I was the one who took the photographs hence she cannot use them several years down the line against me.
 - m. That it is untenable at this stage to ventilate about land parcels no. L.R Ngeria/Megun Block 4 (Saina) xxx and L.R Ngeria/Megun Block 4 (Saina) xx duly registered in the name of third parties who are not parties to this suit.
5. This matter proceeded by way of viva voce evidence on 24th April 2025 when both parties were heard.

Plaintiff's Case Summary

6. In support of her case, the Plaintiff PW1 adopted her affidavit sworn on 22nd October 2024 as her evidence-in-chief and further testified viva voce, reiterating and clarifying the matters deponed therein.

Defendant's Case Summary

7. In support of his case, the Defendant DW1 adopted his response to the summons dated 7th January 2025 and a List Statement dated 7th January 2025 as his evidence-in-chief and further testified viva voce, reiterating and clarifying the matters deponed therein.

Plaintiff's Written Submissions

8. The Plaintiff filed her written submissions dated 28th May 2025 through her Learned Counsel Mr. Isiaho. The Learned Counsel on record submitted on one issue of determination as follows:

Whether the Applicant/Plaintiff is entitled to the prayers she seeks

9. The Learned Counsel submitted that it is not disputed that the marriage between the parties herein has since been dissolved as envisaged by section 6(3) of the *Matrimonial Property Act* and that it is not disputed that the Applicant has produced several documentary evidence in support of her contribution towards the development and/or improvement of the matrimonial properties. Counsel put reliance on section 6 of the Matrimonial Property which defines matrimonial property and made reference to the case of PNN Vs ZWN (2017) eKLR in which Justice Kiage held as follows, "I think that it would be surreal to suppose that *the Constitution* somehow converts the state of coverture into some sort of laissez-passer, a passport to fifty percent wealth regardless of what one does in that marriage. I cannot think of a more pernicious doctrine designed to convert otherwise honest people into gold-digging, sponsor-seeking, pleasure-loving and divorce-hoping brides and, alas, grooms. Industry, economy, effort, frugality, investment and all those principles that lead spouses to work together to improve the family fortunes stand in peril of abandonment were we to say *the Constitution* gives automatic half-share to a spouse whether or not he or she earns it. I do not think that getting married gives a spouse a free to cash cheque bearing the words "50 per cent."
10. The Learned Counsel also submitted that they fully associate with the dicta in that case and that the fact that the properties in issue were acquired and/or developed during the subsistence of the marriage between the parties herein is not a guarantee to entitle the Respondent a share thereof and he has to prove contribution. Counsel cited section 9 of the *Matrimonial Property Act* and submitted that the provision raises the question of contribution and that this court is left to determine is the kind of



contribution applicable in the instant case which can be either the one envisaged by section 7 or section 9 of the Act. He added that there is no evidence that the Respondent made any contribution towards the acquisition and/or improvement of the suit properties.

11. The Learned Counsel submitted that the receipts the Respondent relied upon was submitted by the Applicant were obtained by him after she the Applicant had facilitated the payments for the subject purchases of the said materials. Counsel also cited section 14 of the *Matrimonial Property Act* and sated that with regard to the development of the suit property, it is her unchallenged testimony that the development of the aforesaid parcel of land was facilitated by her contribution either directly or indirectly and made reference to the case of Peter Mburu Echaria Vs Priscilla Njeri Echaria (2007) eKLR. Counsel further referred to *the Constitution* of Kenya 2010 under Article 45(3) and stated that 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.
12. The Learned Counsel further submitted that the law provides in the event of divorce, the matrimonial property is divided between the spouses according to the contribution of each spouse. He added that section 2 of the *Matrimonial Property Act* 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. Reference was made to the case of CWM vs JPM [2017] eKLR, where the Court of Appeal held as follows, “Parties are of equal worth and human dignity, whatever their station in life. To the issue before us, it is obvious the appellant having been married for 18 years made some contribution to the family of the respondent at the time of such coverture. In our view, that contribution, be it domestic work and management of the matrimonial home, child care; or companionship falls within the definition of contribution under the Act.” Counsel also made reference to the case of AW vs MVCMAWM (2018) eKLR.
13. The Learned Counsel furthermore submitted that given the fact that the Plaintiff was married to the Defendant for 17 years, even in the absence of evidence of actual evidence contribution, the Plaintiff must have made significant contribution towards the development of the suit parcels of land and construction of their matrimonial house or suit parcels of land and construction of their matrimonial house or home.

Defendant’s Written Submissions

14. The Defendant filed his written submissions dated 9th June 2025 through his Learned Counsel Mr. Kiptoo. The learned counsel for the Defendant submitted that the Plaintiff’s claim brought by way of an Originating Summons dated 22nd October 2024 sought declarations and orders over certain movable and immovable properties allegedly acquired during the subsistence of the marriage. Counsel noted that the parties were legally divorced in 2024 and the Plaintiff now sought recognition of ownership or a share in:
 - a. A portion measuring 0.25 acres in land parcel Ngeria/Megun Block 4 (Saina)/xx;
 - b. Land parcel Ngeria/Megun Block 4/xxx; and
 - c. Various unspecified household goods.
15. Counsel identified four key issues for determination: whether the Plaintiff had established a beneficial interest in the suit properties; whether the properties constituted matrimonial property; whether the Plaintiff made any identifiable contribution to their acquisition; and whether she was entitled to the reliefs sought.



16. Relying on the *Matrimonial Property Act* No. 49 of 2013, particularly sections 6, 7, and 14, counsel submitted that matrimonial property includes the matrimonial home(s), household goods and effects, and any other property jointly owned and acquired during the marriage. Section 7 vests ownership according to each spouse's contribution, while section 14 provides that property registered in the name of one spouse is presumed to be held in trust for both, unless proven otherwise.
17. It was argued that the Plaintiff had failed to prove any form of contribution—monetary or non-monetary towards the acquisition, improvement, or maintenance of the properties claimed. Counsel cited *Peter Mburu Echaria v Priscilla Njeri Echaria* [2007] eKLR, where the Court of Appeal held that a party claiming a share must prove direct or indirect contribution.
18. On the claim to properties registered in third parties' names, counsel submitted that the Plaintiff sought to claim land registered in the name of the Defendant's deceased mother, yet succession had not been undertaken. Consequently, such property could not be deemed matrimonial property. Counsel relied on *MM v AM* [2008] eKLR, which held that matrimonial property claims cannot lie against property held by third parties unless shown to be held in trust for the parties.
19. Regarding the claim over household goods, counsel argued that the Plaintiff's prayers were vague and general, lacking precision and evidentiary support. Citing *RMW v PSM* [2015] eKLR, counsel contended that the Court cannot grant blanket declarations without clear specification and proof.
20. Finally, it was submitted that the Plaintiff's suit amounted to an abuse of the court process, as it sought declarations over properties she could not legally claim and in respect of which she had not proved any contribution.
21. In conclusion, counsel urged the Court to find that the Plaintiff had failed to establish any legal or beneficial interest in the properties, and prayed that the Originating Summons dated 22nd October 2024 be dismissed with costs to the Respondent.

Analysis and Determination

22. This is an issue touching on the distribution of the matrimonial property as between the Plaintiff and the defendant. It is trite law that any adjudication of this dispute is based on evidence which must be admitted and given weight by this court as having established the facts in issue. The *Evidence Act* has provided the typologies under Section 107 – 109 which forms the yardstick to test the evidence adduced before this court. This is succinctly set out in the *Evidence Act*, Cap 80 Laws of Kenya as hereunder:

“ 107.

- (1) 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.
- (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

108. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.



109. The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”
23. As regards this issue, the Court in *Ann Wambui Ndiritu v Joseph Kiprono Ropkoi & Another* [2005] 1 EA 334 held that:
- “As a general proposition under Section 107 (1) of the *Evidence act*, Cap 80, the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. There is however the evidential burden that is case upon any party the burden of proving any particular fact which he desires the court to believe in its existence which is captured in Sections 109 and 112 of the Act.”
24. The principles on the standard and burden of proof were further articulated in the case of *Evans Nyakwana v Cleophas Bwana Ongaro* [2015] eKLR as follows:
- “As a general proposition, the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. This is the purport of Section 107(1) of the *Evidence act*, Chapter 80 Laws of Kenya. Furthermore, the evidential burden ... is cast upon any party, the burden of proving any particular fact which he desires the court to believe in its evidence. That is captured in Section 109 and 112 of law that proof of that fact shall lie on any particular person ... The appellant did not discharge that burden and as Section 108 of the *Evidence act* provides the burden lies in that person who would fail if evidence at all were given as either side.”
25. The point of contention between the two parties, who were once married but are now divorced, is that they have separated and are each pursuing their interests independently without the partnership. Generally speaking, the principles on distribution of matrimonial property is now settled, starting way back with the decision in *Echaria* case and more recent cases like *LWG V GGW Civil Case E008 of 2021 [2025] KEHC 3188 (KLR)* which emphasizes that the property is divided based on a spouse’s contribution (direct monetary or indirect non-monetary) towards its acquisition, rather than solely by marriage alone. The *Matrimonial Property act* of Kenya (Section 7) itself mandates this approach, with Section 2 defining both financial and non-financial contributions to include domestic work, children, and farm labor. The key principles which mirror the manifestation of evidence on matrimonial property causes action include the following:
- a. Contribution is key:

The central principle is that a spouse does not automatically acquire a beneficial interest in matrimonial property simply by being married; a specific contribution must be proven to entitle them to a share, as established in the *Echaria* case and supported by the act.
 - b. Diverse Forms of Contribution:

The *Matrimonial Property Act* recognizes various forms of contribution, including direct financial contributions and non-monetary contributions such as managing the family business, domestic work, and childcare.
 - c. Independent Assessment:

Each case’s circumstances must be assessed independently to determine what constitutes a significant contribution, allowing for flexibility in property division.



d. Presumption of shared ownership

Property acquired during the marriage is presumed to be owned by both spouses equally until proven otherwise, with a trust also presumed for property registered in one spouse's name but acquired during the marriage.

Relevant Sections of the [Matrimonial Property Act](#):

Section 7:

This section outlines that ownership of matrimonial property vests in spouses based on their contribution towards its acquisition and dictates that it is divided upon divorce.

Section 2:

This section provides a broad definition of what constitutes contribution, covering both monetary and non-monetary efforts.

How the [Matrimonial Property act](#) Addresses Contribution:

- e. Monetary contribution: This encompasses various forms of domestic labor, such as managing the household, childcare, farm work, and providing companionship.
- f. Property held in trust: Property held in trust under customary law, even if it is a matrimonial home, can still become part of matrimonial property if a spouse contributes to its improvement.

26. For one to seek these orders, certain contributing factors have to be met. These include:

- a. The spouse seeking the order must have contributed directly or indirectly to the maintenance or the increase of the other spouse's estate during the marriage.
- b. The court must be satisfied that by reason of such contribution, it would be equitable and just to make a redistribution order.

27. By the Legislature enacting the [Matrimonial Property Act](#) 2013, its aim and objectives is to regularize the parameters of dividing matrimonial property between spouses by dint of Article 45 (3) of [the Constitution](#). Though in the letter and spirit of this Article the parties to a marriage have equal rights during the marriage and at the dissolution of the marriage, this does not mean they have a 50:50 share in the property that they have during the subsistence of the marriage and after divorce. Essentially, by its purposive interpretation, it means that each spouse has an equal right to own property, enter into transactions, to sue and to be sued for the court to determine on the existence or nonexistence of facts so as to rule on what percentage that accrue in favor of one party to the marriage as against the other. As mentioned above in section 2, contribution is measured under both monetary and non-monetary contribution. In so far as non-monetary contribution is concerned, evidence must be led on farm work, management of family business or property, companionship, child care, domestic work and management of matrimonial home.

28. The claim on matrimonial property distribution upon divorce is also underpinned in the Bureau of Rights read within the spectrum of Article 27 of [the Constitution](#) on equal treatment of all persons under the law. It also prohibits discrimination by the State or person both direct and indirect based on a variety of factors including race, sex, pregnancy, marital status and disability. It is also important to note that international law under Article 2(5) & (6) of the same Constitution is part of a sources of law which apply in construing a right of entitlement to the citizens to both genders without discrimination. For example; the Universal Declaration on Human Rights (1948); the International Covenant on



Economic, Social and Cultural Rights (ICESCR 1966); the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW 1979); and the African Charter on Human and People's Rights (1981) [23].

29. This same Constitution recognizes culture and customary law but only frowns or invalidates any provisions of cultural customary law to the extent when it does conflict with the provisions of *the constitution* hence the clauses of repugnancy. In Article 159 (3), *the Constitution* promotes the use of alternative forms of dispute resolution, including traditional mechanisms, but traditional dispute resolution mechanisms are prohibited from acting in a way that

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- (a) contravenes the Bill of Rights;
- (b) is repugnant to justice and morality, or results in outcomes that are repugnant in justice or morality; or
- (c) is inconsistent with *the Constitution* or any written law.

The eliminating of gender discrimination in customs and practices is an explicit guiding principle in the area of land use and management and gender equity is also a guiding principle of the National Land Policy. (See Article 27 (1), (3) (4) & (6), 60 (i - f).

30. In the instant case, the Court is being asked to distribute matrimonial property which means the matrimonial homes, household goods and effects in the matrimonial home or homes or any other immovable and moveable property jointly owned and acquired during the subsistence of the marriage. (Section 6(1) of the *Matrimonial Property Act*). Notably, trust property, including property held in trust under customary law, does not form part of matrimonial property.

31. How do matrimonial property rights get vested between the parties?

- a. Unless otherwise agreed, 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 their marriage is otherwise dissolved.
- b. Parties to an intended marriage may enter into an agreement before their marriage to determine their property rights. Such an agreement may be set aside by the Court if it is determined that the same was influenced by fraud, coercion or is manifestly unjust.
- c. Parties to a marriage have equal rights and obligations at the time of the marriage, during the marriage and at the dissolution of the marriage. (Article 45(3) of *the Constitution* & Section 4 of the Matrimonial act).
- d. In the event one spouse makes a contribution towards the improvement of property, whether acquired before or during the marriage but the property acquired during the marriage does not become matrimonial property, then s/he acquires a beneficial interest in the property equal to the contribution made.

32. The entire trial was based on two assets namely: L.R No. Ngeria/Megun Block 4 (Saina)/xx and L.R. No. Ngeria/Megun Block 4 (Saina)/xxx as being matrimonial property capable of being distributed. According to the Plaintiff, she lays claim to the two immovable assets and goes further to inform the court that during the survivorship of the marriage they set up a matrimonial home in L.R. No. Ngeria/Megun Block 4 (Saina)/xxx without annexing any instruments of registration like the Green Card, Title deed, Sale Agreement, Leasehold, Settlement Land Trustee, or Land Adjudication Register to



discharge the burden of proof on ownership. With regard to the second asset, it falls within the scope of an alleged devolved share to the Defendant from his late mother. According to the Defendant, the same parcel of land is yet to be succeeded or inherited, as no petition has been initiated in the Probate Court for the distribution of the estate. The Plaintiff also presented evidence before this Court regarding movable assets; however, these were never properly identified, nor was a proper inventory submitted for the Court's consideration. The difficulty in this case lies in the Plaintiff's duty to discharge the burden of proving the net estate acquired and developed jointly during the subsistence of the marriage. While I agree with the Plaintiff that they built the alleged matrimonial property on L.R. No. Ngeria/Megun Block 4 (Saina)/xxx, the Defendant has controverted this by asserting that the rights are vested in third parties who are not before this Court. It was upon the Plaintiff to resolve that issue.

33. Land registration is a process of official recording of rights in land through deeds or as titles on properties. It means that there is an official record (land register) of rights on land or of deeds concerning changes in legal situation of defined units of land. Land registration is the documentary manifestation of land as a commodity in the world of commerce. It performs the overall function of providing information regarding the quantum of rights in land and transferability of the same in the production and exchange process. Land registration is not only an expression of the type and nature of tenure operative in a given society but also an information data bank (Wanjala, 1990).
34. Broadly therefore, it was the duty of the Plaintiff to lay down documentary evidence on the land tenure referred to in the affidavit as provided for in our legal structure. Unfortunately, that was not done for this court to establish the net marital estate acquired and owned by both parties during the survivorship of their marriage before the decree of divorce to set them asunder so that the provisions of the *Matrimonial Property Act* can be invoked to make a declaration on distribution.
35. From the foregoing, this Court is unable to make a prima facie legal inference that certain facts exist without proof, regard being had to the indefeasibility and sanctity of title under Kenya's land registration system. The claim by the Plaintiff for this court to grant the prayers sought in the originating summons fails for lack of proof on a balance of probabilities on what constitutes the net marital estate on both immovables and movables as pleaded in the summons. Just as a reminder to the Plaintiff, the burden of proof to any particular fact lies on the person who wishes the Court to believe in its existence unless it is provided for by the law that the fact exists without any other need to discharge that burden. In conclusion, the remedy on distribution of the matrimonial property be and is hereby dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED AT ELDORET VIA EMAIL AND CTS THIS 15TH DAY OF SEPTEMBER 2025.

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R. NYAKUNDI

JUDGE

