



REPUBLIC OF KENYA



**RMK v DMN (Matrimonial Cause E001 of 2023)  
[2025] KEHC 12624 (KLR) (10 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 12624 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
MATRIMONIAL CAUSE E001 OF 2023  
FN MUCHEMI, J  
SEPTEMBER 10, 2025**

**BETWEEN**

**RMK ..... PLAINTIFF**

**AND**

**DMN ..... DEFENDANT**

**JUDGMENT**

**Brief facts**

1. The plaintiff has instituted this suit vide Originating Summons dated 27<sup>th</sup> October 2023 seeking determination that:-
  - a. A declaration that the matrimonial home with furniture, fixtures and fittings under Title No. xx/xxBlock 38 (Waroma)/22; motor vehicles registration numbers KBR xxxV and KBW xxxL be divided according to the input made by both parties during and after the subsistence of their previous marriage.
  - b. A declaration that the plaintiff is the sole rightful owner of the matrimonial home.
  - c. A declaration that the plaintiff is the rightful owner of motor vehicle registration number KBW xxxL currently under the custody of the defendant and motor vehicle registration number KBR xxxV currently under her custody.
2. In opposition to the originating summons, the respondent filed an Affidavit in Response to the Originating Summons dated 28<sup>th</sup> February 2024.
3. The matter proceeded by viva voce evidence.



### **The Plaintiff's Case**

4. PW1, the plaintiff testified that she was married to the defendant since February 2011 and they got divorced vide Milimani MCDC/E1414/2022 on 8<sup>th</sup> May 2023. The plaintiff further testified that she purchased their matrimonial home situated on Title No. xx/xxBlock 38(Waroma)/22 and the same was registered jointly under both their names. PW1 stated that she took out a loan to purchase the matrimonial home in August 2017 and she has been repaying the same from the year 2017 to 2024 without any assistance from the defendant.
5. Due to irreconcilable differences, the plaintiff testified that she moved out of the matrimonial home with her children leaving the defendant who currently resides there.
6. PW1 testified that she and the defendant acquired two motor vehicles registration number KBR xxx B and KBW xxxL during the subsistence of their marriage. The plaintiff further testified that she was in possession of motor vehicle registration number KBR xxx B before and after the marriage.
7. On cross examination, the witness testified that she prayed that the court would apportion the matrimonial property and the two motor vehicles in the ratio of 70% in her favour and 30% in the defendant's favour.
8. The plaintiff further testified that she moved in the matrimonial home in November 2017 after purchasing the property. She further stated that the house was not incomplete but she did renovations and repairs before she moved in. The witness further testified that she and the defendant shared out the costs of repair and redecoration.
9. The plaintiff stated that the motor vehicles were registered in the defendant's name as a symbol of family unity.

### **The Defendant's Case**

10. The defendant, DW1 admits to being married to the plaintiff and testified that the marriage broke down and the plaintiff petitioned for divorce which was granted. The defendant testified that the matrimonial home is the only property that forms part of the matrimonial property as the suit motor vehicles are both registered in his name.
11. The defendant stated that he together with the plaintiff made a commitment which they both executed to purchase the matrimonial home. Further, DW1 stated that he made an initial payment of Kshs. 50,000/- which was made prior to the execution of the said commitment. The defendant testified that the suit property was purchased at Kshs. 4.75million and they agreed that the plaintiff borrows Kshs. 4 million and he paid the remaining Kshs. 750,000/-. DW1 further testified that when they purchased the suit property, it was not habitable and they agreed to renovate it before they moved in. The defendant stated that he spent Kshs. 3 million in repairs and incurred the costs of facilitating the transfer and acquisition of the title deeds into their names at a sum of Kshs. 150,000/-.
12. The defendant testified that he purchased both motor vehicles and refunded the plaintiff Kshs. 380,000/- which she had contributed towards the purchase of motor vehicle registration number KBW xxxL.
13. On cross examination, the defendant admitted that the plaintiff took out a loan for the purchase of their matrimonial home and he only paid for the repairs in the sum of Kshs. 3 million. The defendant prays that the matrimonial property be divided in the ratio of 75% in his favour and 25% in the



plaintiff's favour. The defendant stated that the motor vehicles should be given to him as he paid for their purchase and refunded the monies paid by the plaintiff.

14. Parties agreed to dispose of the suit by way of written submissions.

### **The Plaintiff's Submissions**

15. The plaintiff relies on Section 107 of the *Evidence Act* and the cases of JOO vs MBO; Federation of Women Lawyers (FIDA Kenya) & Another (Amicus Curiae) (Petition 11 of 2020) [2023] KESC 4(KLR) and EGM vs BMM [2020] KECA 188 (KLR) and submits that she proved that she purchased the matrimonial home by borrowing a loan of Kshs. 4 million from KCB Bank and repaid the loan through her salary for a period of four years. Further, the defendant, during the hearing confirmed that she made a payment of Kshs. 4 million towards the purchase of the matrimonial home. The plaintiff argues that she adduced certified bank statements to prove her assertion whereas the defendant adduced receipts from various hardware and electrical shops which are largely unascertainable. Thus, the plaintiff argues that she is entitled to 100% share of the matrimonial home.
16. Pursuant to Section 14 of the *Matrimonial Property Act* and the case of RWW vs EW [2019] KEHC 9921 (KLR), the plaintiff submits that the motor vehicles form part of the matrimonial property as they were acquired during the subsistence of the marriage between the parties. Furthermore, the defendant has not adduced any evidence to show that he purchased both motor vehicles by himself whereas the plaintiff adduced a certified bank statement indicating her contribution towards the purchase of motor vehicle registration number KBW xxxL.

### **The Defendant's Submissions**

17. The defendant relies on Section 6(1) of the *Matrimonial Property Act* and submits that the matrimonial home situated on Title No. xx/xxBlock 38(Waroma)/22 and motor vehicles registration number KBR xxxV and KBW xxxL are matrimonial property as they were acquired during the subsistence of the marriage.
18. The defendant refers to Section 2, 7 and 9 of the *Matrimonial Property Act* and the case of IC vs SS Matrimonial Cause 01 of 2021 [2024] KEHC 3316 (KLR) and submits that distribution of matrimonial property depends on the individual contributions in acquisition of the properties which contribution may be direct monetary contribution or non monetary contribution.
19. The defendant relied on the case of JOO vs MBO; Federation of Women Lawyers (FIDA Kenya) & Another (Amicus Curiae) (Petition 11 of 2020) [2023] KESC 4(KLR). He submits that he made significant monetary and non monetary contribution in the acquisition of the matrimonial home despite the fact that the plaintiff took out a loan to purchase the matrimonial home. The defendant submits that they moved into the matrimonial home in November 2017 having purchased it in August 2017 as the house was incomplete and needed further construction and renovation. At the said duration, the family was living in Kitengela and he was catering for the rent and taking care of the family's day to day needs. Furthermore, the defendant submits that he carried out all the construction and renovations, a fact confirmed by the plaintiff.
20. The defendant further submits that he gave the plaintiff certain amounts of money to deposit into her account during their course of marriage. Furthermore, he sold his motor vehicle registration number KAX 993J and the proceeds of the same were deposited to the plaintiff's account.
21. The defendant argues that the plaintiff wishes to rely on the spirit of matrimonial unity when it suits her and when it does for him. The defendant submits that both parties testified that he was



taking care of the family throughout the course of their marriage which also includes purchasing the household items, furniture and electronics which the court ought to take into consideration. Relying on the decision in *White vs White* [2001] 1 AC 596, the defendant argues that he made non monetary contributions as he invested all his time and expertise to ensure that the house was habitable for the family. The defendant further submits that he did not chase the plaintiff away but it is she who decided to move of the matrimonial home before the marriage was dissolved and thus she cannot attribute her rental expenses to him. Furthermore, since the plaintiff moved in the year 2022, the defendant submits that he has made significant changes regarding repairs and renovations to the house, he has purchased new furniture, utensils and electronics and has been paying the land rates for the property. Thus, he has significantly contributed more to the matrimonial home as compared to the plaintiff and therefore he should get a larger share of the same. To support his argument, the defendant relies on the cases of *Gissing vs Gissing* [1971] AC 886 and *JOO vs MBO; Federation of Women Lawyers (FIDA Kenya) & Another* (supra) and prays that the court distribute the property in the ratio of 70%:30% in his favour.

22. The defendant argues that he solely bought the motor vehicles and were being utilized for the welfare of the family during the subsistence of the marriage. The defendant concedes that each party should remain with the vehicle they are currently in possession of, the plaintiff, KBR xxxV and the defendant KBW xxxL.

### **Issue for determination**

23. The main issue for determination is whether the plaintiff is entitled to a 100% share of matrimonial property on Title No. xx/xxBlock 38 (Waroma)/22.

### **The Law**

24. Article 45 (3) of *the Constitution* of Kenya is instructive on this. It provides:-

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

25. This principle is echoed by Section 3(2) of the *Marriage Act* and further recognized by the Court of Appeal in the case of *Agnes Nanjala William vs Jacob Petrus Vander Goes* No. 127 of 2011 (UR) where the Court of Appeal observed that Article 45(3) of *the Constitution* gives parties to a marriage equal rights before, during and after a marriage ends.

### **What is the Matrimonial Property and the Apportionment Thereof**

26. In their pleadings, the plaintiff claims whole of the matrimonial property L.R. xxx /xxxxBlock 38 (Waroma)/22 based on the fact that she solely purchased the property. The plaintiff also claimed vehicle registration number KBW 787 L under the custody of the defendant be returned to her and further that she be declared the rightful owner of vehicle registration number KBR xxx V. The defendant in his replying affidavit urged the court no to declare the two vehicles as matrimonial property. He claimed that he bought both vehicles and that the properties should be given to her.
27. However, as the hearing of the case proceeded and the submissions subsequently filed, it was evident that the parties had somehow agreed on the distribution of the vehicles to the effect that each party keeps the vehicle each has been using. The plaintiff should therefore take vehicle registration number KBR xxx V while the defendant keeps the vehicle he uses registration number KBW 787 L. Both vehicles are registered in the names of the defendant. It was evident that both vehicles were acquired during the subsistence of the marriage and are therefore matrimonial properties.



28. During the subsistence of their marriage, the parties acquired a property which became their matrimonial home namely KR xx/xxBlock 38 (Waroma)/22. The plaintiff testified, and it is not disputed that she was at the time employed and borrowed a loan from Kenya Commercial Bank of Ksh.4,000,000 for purchase of the property. The loan was repaid through a check off system from August 2017 to 20<sup>th</sup> May 2024. A deposit had been paid earlier from the plaintiff's KCB bank account of Ksh.635,000 as the initial deposit. The plaintiff claims she spent Ksh.4,700,000 to purchase the property. The sale agreement between the plaintiff and the vendor was produced in evidence. The parties agreed that the property be registered in the name of the defendant. The plaintiff proposes she be given 70% share and defendant gets 30%.
29. On the other hand, the defendant testified that at the time the home was bought, the house was incomplete and he spent funds to finish up. The parties separated in the year 2 and defendant claims he thereafter renovated the home after the plaintiff and the children left the home. The plaintiff said she was not aware of the subsequent renovations. The defendant also claims that he spent some funds processing the title of the property which amounted to Ksh.150,000/=. In total, the defendant claims to have contributed by way of renovations to the home Ksh.3,000,000/=. Based on this contribution, the defendant claims 70% share leaving 30% for the plaintiff.
30. As for the plaintiff, she produced documents including loan statements, bank transfers. Ksh.635,000/= was paid to the buyer from her KCB account No.1215169388 on 18<sup>th</sup> February 2020. The loan statement was produced showing that the plaintiff took loan of Ksh.4,000,000/= on 4<sup>th</sup> February 2020 and repaid consistently through check off system up to 20<sup>th</sup> May 2024 when she cleared it.
31. As for the defendant, he produced a host of receipts for purchases of hardware and other materials and casual labourer wages all totalling to Ksh.1,908,000/= being the amount that went towards renovations and repairs dating from 2017 to 2019. It is noted that most of the receipts are written with one hand. But since they were not contested by the plaintiff the court will take a flat figure of Ksh.2,000,000 as defendant's contribution towards the repairs and redecoration of the matrimonial property.
32. The court makes the following orders based on the contribution of the parties to make the current value of the property and regarding the agreed distribution of the two vehicles.
- a. LR xx/xxBlock 38 (Waroma)/ 22
    - i. Plaintiff to get 75%
    - ii. Defendant to 25%The parties to get the property valued by a valuer agreed by themselves in order to determine the value of their shares and agree on the way forward in regard as to either of the parties retaining the home and paying off the other the value of his/her share, or as they may agree.
  - b. Vehicles
    - i. Plaintiff to retain vehicle registration number KBR xxx V.
    - ii. Defendant to retain vehicle registration number KBW 787 L.
33. This being a family matter, each party to meet its own costs.
34. It is hereby so ordered.

**JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 10<sup>TH</sup> DAY OF SEPTEMBER 2025,**



**F. MUCHEMI**  
**JUDGE**

