



**SC alias SCK v MKC (Matrimonial Cause E007 of 2024)
[2025] KEHC 12605 (KLR) (16 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 12605 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MATRIMONIAL CAUSE E007 OF 2024
RN NYAKUNDI, J
SEPTEMBER 16, 2025**

BETWEEN

SC ALIAS SCK PLAINTIFF

AND

MKC RESPONDENT

JUDGMENT

1. The Plaintiff moved this Court vide Originating Summons dated 28th November 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:
 - a. 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 and for the Plaintiff/Applicant in their respective shares as the legal owners and cestui que trust respectively namely:
 - a. L.R No. Uasin Gishu/Charar/xx measuring approximately 2.8 Ha
 - b. L.R No. Uasin Gishu/Charar/xx measuring approximately 2.3 Ha.
 - c. L.R No. Eldoret Municipality Block x/1006 measuring approximately 0.0294 of an Acre.
 - d. Household items and all other properties acquired during the subsistence of the marriage and personal effects full details whereof are well within the Defendant/ Respondent’s knowledge.



- b. That a declaration do issue to the effect that 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.
 - c. 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.
 - d. That in the alternative to all the above, an order be and is hereby directing that the Respondent/Defendant is not entitled to any share of the above said properties as enumerated in (1) above.
 - e. 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.
 - f. That upon the grant of any and/or all of the foregoing, a permanent injunction do issue restraining him 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.
 - g. That such other and/or further orders be granted as the court may deem fit and expedient in the circumstances.
 - h. The Defendant be condemned to pay costs and interest to the Plaintiff.
2. The Originating Summons was supported by the annexed affidavit sworn by the Plaintiff who deponed as follows: -
- a. That the Defendant and I were legally husband and wife having married each other on 3rd December 1975 pursuant to the provisions of Cap. 150 now repealed.
 - b. That during the subsistence of their marriage, the parties acquired and devolved L.R No. Uasin Gishu/Charar/xx, L.R No. Uasin Gishu/Charar/xx and Eldoret Municipality Block x/1006 by their joint efforts.
 - c. That the Defendant and I were blessed with four (4) issues of our marriage.
 - d. That our said marriage has since been dissolved vide Eldoret Chief Magistrate's Court divorce cause No. 96 of 2022.
 - e. That the Defendant/Respondent who has always been of violent tendencies has threatened to dispose off our aforesaid matrimonial properties albeit my monetary and non-monetary contribution.
 - f. That I confirm I was gainfully employed as a nurse from 4th August, 1975 until 23rd August 2007 when I retired from service.
 - g. That the Defendant/Respondent has severally threatened to evict me from our matrimonial home, a threat he has persisted to make especially since our marriage was dissolved.
 - h. That I also acquired household items which I urge this Honourable Court to apportion to us according to our contribution full details which shall be adduced at the hearing hereof.



- i. 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.
 - j. 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.
 - k. That the properties captioned under paragraph 1 (a)-(d) of the Originating Summons are currently in the sole possession and/or control of the Respondent/Defendant to my detriment.
 - l. 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 since all the parcels of land are currently registered in his sole name.
 - m. That I am now facing the danger of losing all my past investment and stand to suffer great injustice should the Respondent/Defendant retain the sole ownership and control of the said properties which were acquired by our joint efforts.
 - n. 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.
 - o. That the Respondent/Defendant's continued enjoyment of our matrimonial home is prejudicial to me as the said house was solely developed by me.
 - p. 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.
3. There was no response to the Originating Summons as the Defendant/Respondent did not enter appearance and/or file a response to the claim. As a result, this matter subsequently proceeded by a way of formal proof on 9th July 2025.

Plaintiff's Case Summary

- 4. In support of her case, the Plaintiff PW1 adopted her affidavit, the annexures thereto, her witness statement and list of documents containing 12 items sworn on 28th November 2024, as her evidence-in-chief and further testified viva voce, reiterating and clarifying the matters deponed therein.
- 5. The Plaintiff stated that they were legally husband and wife having solemnized their union on 3rd December 1975 and this position was corroborated by items (1) and (2) of the list of documents which were deemed as Pexh.1 and Pexh. 2 respectively and that as at the date of the marriage, the Plaintiff was a nurse hence gainfully employed. She also stated that she and the Respondent acquired several properties during the subsistence of their marriage which triggered the filing of the instant proceedings and she produced copies of green cards for L.R. NO. Uasin Gishu/Charchar/xx, for L.R. NO. Uasin Gishu/Charchar/xx and Eldoret Municipality Block x/1006 all registered in the name of the Respondent to confirm what she deems as matrimonial properties and these green cards were deemed as Pexh 3, 4 and 5 respectively.
- 6. The Plaintiff further cited violence meted upon her by the Respondent as the reason she opted to have their marriage dissolved and put reliance on the P3 form and the medical chits which she produced as Pexh 6 and 7. She also stated that that their said union was subsequently dissolved vide the decree



absolute issued vide Eldoret Chief Magistrate's Court Divorce Cause E096 of 2022 which decree nisi and absolute she produced as Pexh 8 and 9 respectively. Further to this, it was PW1's evidence that she worked as a civil servant for the Kenyatta National Hospital from 4/8/1975 to 23/8/2007 and corroborated the evidence by producing her certificate of service as Pexh 10 and placed reliance on a bundle of photographs of the matrimonial properties and produced the same as Pexh 11.

7. About the mode of distribution of their matrimonial estate, it PW1's proposal that she was ready to allow the Respondent retain L.R No. Eldoret Municipality Block x/1006 measuring approximately 0.0294 of an acre on which stands a three bedroomed house, a servant's quarter and a guest house and pegged the value of the same at Kshs. 15 Million. She also stated that noting the Respondent may require land for cultivation purposes, she was also ready and willing to have him take 2.5 acres of their matrimonial land at Moiben and urged the court to award her the remaining ten acres which she pegs the value at approximately ten (10) million.
8. This matrimonial cause was also canvassed by way of written submissions.

Plaintiff's Written Submissions

9. The Plaintiff filed her written submissions dated 28th July 2025 through her Learned Counsel Mrs. Isiaho Sawe. The Learned Counsel on record submitted on two issues of determination as follows:
 - a. Whether the Applicant/Plaintiff is entitled to the prayers she seeks?
 - b. Who should bear the cost of the suit?
10. On the first issue, the learned counsel made reference to section 6(3) of the *Matrimonial Property Act* and submitted it is not in dispute that the marriage between the parties herein has been dissolved as envisaged by the above provision and that it is not in dispute the Applicant has been gainfully employed as a nurse from the year 1975 until her retirement in the year 2007 a period of thirty-two (32) years. She also submitted putting reference to section 6 of the *Matrimonial Property Act* 2013 which defines matrimonial property. Reliance was placed in the case of PNN Vs ZWN (2017) eKLR.
11. Counsel also made reference to section 9 of the *Matrimonial Property Act* 2013 and submitted that the section raises the question of contribution and that what this court is left to determine is the kind of contribution applicable in the instant case which can be either according to the provisions of section 7 or section 9 of the Act. Further counsel submitted that there is no evidence that the Respondent made any contributions towards the acquisition and/or improvement of the suit properties.
12. Counsel further made reference to section 14 of the *Matrimonial Property Act* and in the case of Peter Mburu Echaria Vs Priscilla Njeri Echaria (2007) eKLR. She went ahead and cited Article 45 (3) of *the Constitution* of Kenya 2010 and submitted 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. The learned counsel also cited section of the *Matrimonial Property Act* and stated that the law provides that in the event of divorce, the matrimonial property is divided between the spouses according to the contribution of each spouse. Reference was placed in section 2 of the *Matrimonial Property Act* 2013 and the case of CWM Vs JPM [2017], Civil Appeal No. 142 of 2018; AW VS MVCMAWM [2018] eKLR.
13. It was the learned Counsel's closing submission that given the fact that the Plaintiff was married to the Defendant for 14 years, even in the absence of actual contribution, she must have made significant contribution towards the acquisition and construction of their matrimonial house or home.



Analysis and Determination

14. I have considered the pleadings, the affidavit evidence adduced, the exhibits produced and the submissions by learned counsel for the Plaintiff. The Defendant, though duly served, did not enter appearance and/or file any response, and the matter proceeded by way of formal proof. There are 2 issues which arise for determination as follows:
- a. Whether the properties in question constitute matrimonial property?
 - b. How should the matrimonial property be divided?

Whether the properties in question constitute matrimonial property?

15. It is not disputed that the Plaintiff and Defendant contracted a marriage on 3rd December 1975 under Cap. 150 (now repealed) and were blessed with four children. The marriage was subsequently dissolved vide Eldoret Chief Magistrate's Court Divorce Cause No. 96 of 2022 as evidenced by the Decree Nisi issued on 30th January 2024. It is thus apparent that the Plaintiff and the Appellant were in the marital union for approximately forty-seven (47) years. The Plaintiff sought declarations in respect of properties acquired during the subsistence of the marriage, namely:
- a. L.R. No. Uasin Gishu/Charar/xx measuring approximately 2.8 Ha.
 - b. L.R. No. Uasin Gishu/Charar/xx measuring approximately 2.3 Ha.
 - c. L.R. No. Eldoret Municipality Block x/1006 measuring approximately 0.0294 of an acre.
 - d. Household items and other properties acquired during the marriage.
16. The applicable law in this case is the *Matrimonial Property Act* 2013 specifically section 6(1). This section provides as follows: -
6. 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.
17. Regarding the property known as LR. No. Uasin Gishu/Charar/xx and L.R. No. Uasin Gishu/Charar/xx, the evidence is that these were acquired during the subsistence of the marriage. The Plaintiff produced the respective green cards (annexures to the Originating Summons) showing that the properties are registered in the name of the Defendant. The Plaintiff testified, however, that both parcels were acquired and developed by their joint efforts during the marriage, though the Defendant holds title in his sole name. I therefore find that these parcels constitute matrimonial property within the meaning of section 6(1)(a) of the *Matrimonial Property Act*.
18. Regarding LR. No. Eldoret Municipality Block x/1006, the Plaintiff testified that this property, measuring approximately 0.0294 of an acre and developed with a three-bedroomed house, a servant's quarter, and a guest house, was also acquired during the marriage and served as the matrimonial home. This position is corroborated by the green card and photographic evidence produced by the Plaintiff.



I am therefore satisfied that this property equally qualifies as matrimonial property under section 6(1) (a) of the *Matrimonial Property Act*.

19. From the evidence on record, it thus clear that the title deeds for LR. No. Uasin Gishu/Charar/xx and L.R. No. Uasin Gishu/Charar/xx are registered in the name of the Defendant. For LR. No. Eldoret Municipality Block x/1006, the Certificate of title is registered in the name of the Defendant as well. With these facts, I will put reliance in section 14 of the *Matrimonial Property Act* 2013 which sets out two rebuttable presumptions in regard to property acquired during marriage as follows: -

14. Presumptions as to property acquired during marriage

Where matrimonial property is acquired during marriage –

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

20. In the dicta of *Njoroge Vs Ngari* [1985] KLR 480 the court stated that where a property is held in the name of one spouse, even if that property is registered in the name of one person but the other spouse made contributions towards its acquisition, then each spouse has a proprietary interest in said property. The Court in that case held thus-

“Where a property is registered in the name of one spouse only the other spouse is required to prove contribution towards the acquisition of said property in order to establish beneficial interest thereto.” Through this decision, the court enforced the provisions of Section 14 of the *Matrimonial Property Act*.

21. In the case of *PWK Vs JKG* [2015] eKLR the court stated 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 properties 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 of Lord Pearson in *Gissing vs Gissing* [1070] 2ALL ER 780 Page 788”

22. Similarly, in the case of *ALM -VS- JNN* (2020) eKLR the court held that:

“Further Section 14(a) of the Act provides that where matrimonial property is acquired during the marriage in the name of the one spouse, there shall be a rebuttable presumption that the property is held in trust for the other spouse. In the instant case, the suit properties being matrimonial property as it was acquired during the subsistence of the marriage and being registered in the name of the defendant it can only be said that the said was held in trust for the Applicant.”

23. In the celebrated case of *Peter Mburu Echaria Vs Priscilla Njeri Echaria* [2007] eKLR it was held thus: -

“It is clear from those cases that when dealing with disputes between husband and wife over property the court applies the general principles of law applicable in property disputes in all courts between all parties irrespective of the fact that they are married. Those principles



as Lord Diplock said in *Petti* are those of English law of trusts. The House of Lords specifically decided so in *Gissing vs. Gissing*. According to the English law of trusts it is only through the wife's financial contribution, direct or indirect towards the acquisition of the property registered in the name of her husband that entitles her to a beneficial interest in the property.”

24. The implication is that section 14 of the *Matrimonial Property Act* creates a trust in favour of a spouse with respect to the properties acquired during the subsistence of the marriage in the name of one spouse only. It is not disputable that the said parcels of land subject to this matrimonial cause though registered in the sole name of the Defendant was acquired during the period of subsistence of the Plaintiff and the Defendant's marital union and thus constitutes matrimonial property.

How should the matrimonial property be divided?

25. About the mode of distribution of their matrimonial estate, it PW1's proposal that she was ready to allow the Respondent retain L.R No. Eldoret Municipality Block x/1006 measuring approximately 0.0294 of an acre on which stands a three bedroomed house, a servant's quarter and a guest house. She also stated that noting the Respondent may require land for cultivation purposes, she was also ready and willing to have him take 2.5 acres of their matrimonial land at Moiben and urged the court to award her the remaining ten acres which she pegged the value at approximately ten (10) million.
26. For the Plaintiff to be entitled to a share of the aforesaid properties, she must demonstrate her contribution towards their acquisition and/or development. Contribution by a spouse for purposes of sharing matrimonial property may be monetary or non-monetary or both. Section 2 of the *Matrimonial Property Act* provides for contribution and states as follows: -

“contribution” means monetary and non-monetary contribution and includes-

- (a) domestic work and management of the matrimonial home;
- (b) child care;
- (c) companionship;
- (d) management of family business or property; and
- (e) farm work;

27. Non-monetary contribution is defined in section 2 of the *Matrimonial Property Act* to include Domestic work, management of the matrimonial home, child care, management of family business farm work and companionship. Section 7 of the *Matrimonial Property Act* provides as follows:

7. Ownership of matrimonial property

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.

28. Moreover, section 9 of the *Matrimonial Property Act* also provides as under: -

9. Acquisition of interest in property by contribution:

Where one spouse acquires property before or during the marriage and the property acquired during the marriage does not become matrimonial property, but the other spouse makes a contribution towards the improvement of the property, the spouse



who makes a contribution acquires a beneficial interest in the property equal to the contribution made.

29. In the dictum of Federation of Women Lawyers Kenya (FIDA) -vs- Attorney General & another [2018] eKLR the court stated that: -

“The law recognizes equal worth and equal importance of the parties in marriage. Thus the beneficial share of each spouse as the on the division of matrimonial property stands in Kenya ultimately depends on the parties proven respective proportions of financial contribution either direct or indirect towards the acquisition of the property. First, the Act recognizes monetary and non-monetary contribution which is clearly defined. By providing that a party walks out with his or her entitlement based on his or her contribution, the section entrenches the principle of equality in marriage.”

30. In UMM Vs IMM [2014] eKLR the court was of the view that: -

“As far as I can see it is the provisions of Sections 2, 6 and 7 of the *Matrimonial property Act*, 2013 fleshes out the right provided by Article 45(3). By recognizing that both monetary and non-monetary contribution must be taken into account, it is congruent with the Constitutional provisions of Article 45 (3) of *the Constitution* that 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. I take the view that at the dissolution of the marriage each partner should walk away with what he/she deserves. What one deserves must be arrived at by considering her/his respective contribution whether it be monetary or non-monetary. The bigger the contribution the bigger the entitlement. Where there is evidence that a non-monetary contribution entitles a spouse to half of the marital property then the Courts should give it effect. But to hold that Article 45(3) decrees an automatic 50:50 sharing could imperil the marriage institution. It would give opportunity to a fortune seeker to contract a marriage, sit back without making any monetary or non-monetary contribution, distress the union and wait to reap half the marital property. That surely is oppressive to the spouse who makes the bigger contribution. That cannot be the sense of equality contemplated by Article 45(3).”

31. The Supreme Court of Kenya in the case of Joseph Ombogi Ogentoto Vs Martha Bosire Ogentoto Petition No.11 of 2020 conclusively settled on how matrimonial properties should be divided where it was held as follows: -

“...we also find that Article 45(3) acts as a means of providing for equality as at the time of dissolution of marriage but such equality can only mean that each party is entitled to their fair share of matrimonial property and no more. Nowhere in *the constitution* do we find any suggestion that a marriage between parties automatically results in common ownership or co-ownership of property (hence vesting of property rights) and Article 45(3) was not designed of the purpose of enabling this court to pass property rights from one spouse to another by fact of marriage only.....our view is that, while Article 45(3) deals with equality of the fundamental rights of spouses during and after dissolution of marriage, we must reiterate that equality does not mean the re-distribution of proprietary rights at the dissolution of a marriage. Neither does our reading of this provision lead to the assumption that spouses are automatically entitled to a 50% share by fact of being married



.....it is our finding that the stated quality under Article 45(3) means that the courts are to ensure that at the dissolution of a marriage, each party to a marriage gets a fair share of the matrimonial property based on their contribution. This is best done by considering the respective contribution of each party to ensure no party is unfairly denied what they deserve as well as ensuring that no party is unfairly given more than what he or she contributed

.....Therefore, in the event that a marriage breaks down, the function of any court is to make a fair and equitable division of the acquired matrimonial property guided by the provisions of Article 45(3) of *the Constitution*. To hold that Article 45(3) has the meaning of declaring that property should be automatically shared at the ratio of 50:50 would bring huge difficulties within marriages and Tuiyot, J (as he then was) has explained why above. Noting the changing times and the norms in our society now, such a finding would encourage some parties to only enter into marriages, comfortably subsist in the marriage without making any monetary or non-monetary contribution, proceed to have the marriage dissolved then wait to be automatically given 50% of the marital property. That could not have been the intention of our law on the subject.”

32. In applying the maxim of equity, equality is equity, in which equity is now a constitutional principle in Article 10(2)(b) of *the Constitution* the Apex Court stated as follows: -

“ 95. As was pointed out by the Court in the English case of *Gissing v Gissing* [1971] AC 886, the maxim ‘equality is equity’ has never been truer. To our minds, equity is an important principle when it comes to matrimonial property since what is fair as it relates to equity is 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 acquisition of matrimonial property, even though such contribution is indirect, but nevertheless has in one way or another, enabled the acquisition of such property amounts to significant contribution. Such direct or indirect acts as was discussed by Lord Justice Fox in *Burns Vs Burns* [1984] 1 All ER 244 may include:

- a. Paying part of the purchase price of the matrimonial property.
- b. Contributing regularly to the monthly payments in the acquisition of such property.
- c. Making a substantial financial contribution to the family expenses so as to enable the mortgage instalments to be paid.
- d. Contributing to the running of and welfare of the home and easing the burden of the spouse paying for the property.
- e. Caring for children and the family at large as the other spouse works to earn money to pay for the property.”

33. The Supreme Court of Kenya further stated as follows: -

“ 96. These considerations are in line with the finding of the court in the English case of *White Vs White* [2001] 1 AC 596 where Lord Nicholls of Birkenhead



held that the court should always ensure a fair outcome in considering the contribution of spouses by stating:

Self-evidently, fairness requires the court to take into account all the circumstances of the case. Indeed, the statute so provides. It is also self-evident that the circumstances in which the statutory powers have to be exercised vary widely ... But there is one principle of universal application which can be stated with confidence. In seeking to achieve a fair outcome, there is no place for discrimination between husband and wife and their respective roles. Typically, a husband and wife share the activities of earning money, running their home and caring for their children. Traditionally, the husband earned the money, and the wife looked after the home and the children. This traditional division of labour is no longer the order of the day. Frequently both parents work. Sometimes it is the wife who is the money-earner, and the husband runs the home and cares for the children during the day. But whatever the division of labour chosen by the husband and wife, or forced upon them by circumstances, fairness requires that this should not prejudice or advantage either party when considering paragraph (f), relating to the parties' contribution.”

34. From the foregoing legal provisions and numerous judicial decisions, it is evident that although *the Constitution* guarantees equal rights to parties in a marital union, each spouse must demonstrate either monetary or non-monetary contribution in order to establish entitlement to a share of the matrimonial property.
35. Since contribution is a matter of fact, it calls for adduction of evidence. It is a well-established principle of law that the burden of proof lies on the party who makes an allegation. Under Section 107 of the *Evidence Act*, Cap 80 of the Laws of Kenya, the responsibility of proving any fact rests with the person who seeks to rely on it.

“Burden of Proof

1. Whoever desires any court to give judgment as to any legal 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.”
36. Therefore, the burden of proof squarely lies on the Plaintiff. Depending on the nature of the evidence adduced, the evidential burden of proof may shift to the Defendant and vice versa whereas the legal burden of proof remains static upon the Plaintiff. The standard of proof in this matter is on a balance of probabilities. The Plaintiff testified that she was gainfully employed as a nurse from 1975 until her retirement in 2007 and that during the subsistence of the marriage, she contributed both financially and non-financially towards the acquisition and development of the matrimonial properties. She produced the green cards to the suit properties, medical reports demonstrating violence during the marriage, and her certificate of service confirming employment. She also produced photographs of the matrimonial properties.



37. Section 14 of the *Matrimonial Property Act* provides that where property is registered in the name of one spouse, but is acquired during marriage, there is a rebuttable presumption that such property is held in trust for the other spouse. However, from the evidence presented, it is clear that while the Plaintiff asserted both monetary and non-monetary contributions toward the acquisition and development of the suit properties, she did not provide tangible or detailed proof of such contributions. For instance, no documentary evidence such as receipts, bank records or specific bank statements were tendered to demonstrate her financial input in acquiring the parcels of land or developing the matrimonial home. Similarly, although she claimed to have made non-monetary contributions as defined in section 2 of the *Matrimonial Property Act* through domestic work, child care, and companionship, there was no corroborative evidence adduced to quantify the extent of such input in relation to the Defendant's contribution. Consequently, while she is entitled to a fair share of the matrimonial properties, she cannot, on the basis of the evidence before this Court, be awarded the whole of the properties as she alleged.
38. It must be accepted that fairness in distribution of matrimonial property is an elusive concept based on a given set of facts contextualized on various variables upon which judicial discretion and logical reasoning is underpinned. What the *matrimonial property Act* provides is a cluster of indirect and direct contribution but there is limited guidance on how the courts should exercise their statutory powers on distribution of the marital estate. What comes in handy are the judicial precedents from the superior courts giving regard to all the circumstances of the individual case. Presumably, fairness lay in enabling the wife to continue to live in the version to which her husband had accustomed her to more importantly on the protection and guarantees of the rights which accrue under Art. 26 of *the constitution* of the right to life. What is sometimes forgotten in the metrics of distribution on both indirect and direct contribution is the aspect that the financial provision made upon divorce by one spouse for the other sometimes typically the wife is not in the nature of largesse. I am of the considered view that in the distribution of the marital estate is not the case of taking away from one spouse and giving to the other the immovable and movable properties which belong to the former. In the very practical sense given the connotational imperative in Art. 45 (3) of *the constitution* and the enabling statute law is that each party to a marriage is entitled to a fair share of the net estate acquired during the subsistence of the marriage. The such for courts as they go about interpreting the law is always of what are the condition precedent all requirements of fairness in the particular case. That is the seminal question as the courts go about interpreting the law.
39. The great controversy in the distribution of the marital estate under the *matrimonial property Act*, is the consideration of the welfare and the best interest of the children particularly those under 18 years who can no longer afford to be tossed from one parent to another in such of provision for their survival rights as defined in *the constitution* and the children's Act. In the context where there are no minors the situational analysis might be different like in the instant case that was not a major factor for adjudication. There is always an irrefutable presumption that every relationship of a marriage gives rise to a relations of inter-dependence commonly referred to as a partnership of equals. How far this conceptualization is capable of harnessing the doctrine of fairness in the distribution of the matrimonial property is moot. One of the battleground litigation is on the characteristics of financial needs of either spouse following the decree nisi or absolute after dissolution of the marriage. It is true that the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the forceable future is a matter which cannot be wished away. The litigation more often than not is explicitly on compensation to redress the financial disparities which might be occasioned by the divorce. The other strand of significance is the concept of equal sharing, the principle sometimes derived from *the constitution* but as interpreted and understood by each party to a marriage is for all practical purposes never given the purposive interpretation. In the marriage union both the



husband and wife commit themselves to a lifetime “contract” if this doctrine is to be imported loosely to this discussion but the yardstick of equality and fairness on the distribution of the marital estate remains elusive.

40. As for the facts of this case applying the standard and burden of proof under Section 107 (1), 108 & 109 of the *Evidence Act*, I am persuaded to exercise discretion to find in favour of the Applicant but without confining myself to her single testimony but give an evaluation on the fruits of her marriage partnership with the defendant/respondent. Her case tilted more to indirect contribution within the provisions of the *matrimonial property Act*.
41. This court Guided by the *Matrimonial Property Act* and Article 45(3) of *the Constitution* of Kenya 2010, I grant the following orders THAT: -
- a. A declaration be and is hereby issued that the following properties constitute matrimonial property within the meaning of section 6 of the *Matrimonial Property Act*, 2013:
 - a. L.R No. Uasin Gishu/Charar/xx measuring approximately 2.8 Ha
 - b. L.R No. Uasin Gishu/Charar/xx measuring approximately 2.3 Ha.
 - c. L.R No. Eldoret Municipality Block x/1006 measuring approximately 0.0294 of an Acre.
 - b. A declaration be and is hereby issued that the Defendant shall retain L.R. No. Eldoret Municipality Block x/1006 being the matrimonial home but the Plaintiff shall hold a 50% beneficial interest therein.
 - c. A declaration be and is hereby issued that the parcel known as L.R. No. Uasin Gishu/Charar/xx shall vest in the Defendant together with all the buildings and the developments therein.
 - d. A declaration be and is hereby issued that the parcel known as L.R. No. Uasin Gishu/Charar/xx shall vest in the Plaintiff together with all the buildings and the developments therein.
 - e. A permanent injunction be and is hereby issued restraining the Defendant, whether by himself, his agents, or servants, from alienating, transferring, or disposing of the suit properties to the detriment of the Plaintiff’s lawful interest pending full implementation of this judgment.
 - f. Each party shall bear their own costs of this suit.

DATED, SIGNED AND DELIVERED AT ELDORET VIA EMAIL AND CTS THIS 16TH DAY OF SEPTEMBER 2025

.....

R. NYAKUNDI

JUDGE

