



**MJEDB v JBN (Civil Suit E072 of 2021)
[2024] KEHC 7993 (KLR) (Family) (14 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 7993 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
CIVIL SUIT E072 OF 2021
PM NYAUNDI, J
JUNE 14, 2024**

BETWEEN

MJEDB APPLICANT

AND

JBN RESPONDENT

JUDGMENT

1. The Applicant herein, M.J.E.D.B took out Originating Summons dated 19th October 2021 January against the Respondent seeking declaration of the following;
 1. Whether the applicant and the Respondent officiated their union on 24th July 2019 and prior to that had been living together as husband and wife from the year 2015?
 2. Whether there is one issue of marriage between the applicant and the respondent?
 3. Whether the applicant has been solely providing and taking care of the issue whilst the Respondent has neglected his parental duties?
 4. Whether the marriage was dissolved on 15th March 2021?
 5. Whether the applicant was working as a (voluntary) clinical nutritional consultant in Kenya for the period 15th September 2015 to 16th December 2015 and 6th April until 8th August 2016 and is currently working as a clinical nutritional consultant in the Netherlands while the respondent is a practicing nurse licensed in Kenya and was previously working in Somalia and is currently practicing in the Netherlands as a nurse and an order picker?



6. Whether the applicant and the respondent during the subsistence of their marriage used and applied their income unsparingly towards acquisition and development of the acquired matrimonial properties?
 7. Whether the parties during subsistence of their marriage acquired the following properties namely: -
 - a. Plot 32 on [Particulars Withheld].
 - b. [Particulars Withheld]
 - c. Plot No. [Particulars Withheld].
 8. Whether the applicant contributed to the acquisition of the above mentioned properties and if so, to what extent?
 9. Whether the applicant is entitled to equal share of all the matrimonial properties acquired jointly despite the respondent having and/or is in the process of having himself registered as the sole owner?
 10. Whether the court should order that all matrimonial properties acquired during the subsistence of the marriage be distributed equally now that the marriage is dissolved?
 11. Who should pay costs?
2. The Summons was supported by the grounds on the face of the Application and by the Affidavit of even date sworn by the Applicant.
 3. The Respondent J.B.A entered appearance in the matter, filed a preliminary objection but did not respond to the originating summons nor did he file any reply to the Summons. The Preliminary Objection was determined before the Originating Summons was set down for hearing. The Summons was canvassed by way of viva voce evidence.

Evidence.

4. The Petitioner testified on 26/10/2023. She adopted her supporting affidavit as her evidence in chief. She told the court that she and the Respondent met in Kenya in 2014 while she was on a visit. They started cohabiting in 2015 and moved in together in 2016 in Kenya. She contributed towards payment of bills and did house chores while the Respondent met the needs of the family. They did a traditional wedding in 2017 in Chuka and formalised their marriage in 2019. She moved back to Netherlands while the Respondent continued working in Kenya. She paid for his permit to join her in Netherlands and supported him financially during this period. The Respondent later got a job in Somalia and he would visit her every 2-4 months.
5. She testified that during the subsistence of their marriage, they purchased the following properties; Plot No. [Particulars Withheld]; Apartment No.[Particulars Withheld] and Plot No. [Particulars Withheld]. She told the court that she contributed financially towards the purchase of these properties. That the respondent does not provide for the issue of the marriage despite an existing court order. She urged the court to allow her Originating Summons and give her, her share of the properties.
6. She produced exhibits marked as MB1-MB10(marriage certificate and respondent's Identity Card; copy of birth certificate of the minor; divorce orders; money transfers from the applicant to the respondent; title documents/sale agreements; police report; proceedings for child maintenance; email exchange from the respondent; email dated 30/12/2010; and social media reports)



Applicant's Submissions.

7. The Applicant filed written submissions dated 1st December 2023. She identified the issues for determination as;
 - i. Whether the suit properties constitute matrimonial properties.
 - ii. Whether the Applicant made any contribution towards acquisition of the matrimonial properties.
 - iii. Whether she is entitled to an equal share or such other proportion of the matrimonial property.
8. The Applicant relied on Section 6 (1) of the [Matrimonial Property Act](#) No. 49 of 2013 which defines matrimonial property as;
 - a. the matrimonial home or homes
 - b. household goods and effects in the matrimonial home or homes; or
 - c. any other immovable or moveable property jointly owned and acquired during the subsistence of the marriage
9. She submitted that it is not contested that they solemnized their marriage on 24th July 2019 and lived prior to that as husband and wife after their traditional wedding in 2017. That the properties were acquired between 2018 and 2021 and such constitute matrimonial properties.
10. On the second issue, the Applicant relied on Article 45(3) which provides the foundation of parties' equal rights in marriage, Section 7 which provides for the rights of spouses in regards to matrimonial property and Section 2 of the said [Matrimonial Property Act](#) which defines contribution as monetary and non-monetary. She also relied on the decision in [AWM vs. JGK](#) (2021)eKLR. She submitted that while living with the Respondent in Kenya and abroad, she made both monetary and non-monetary contribution towards the purchase of these properties. She did domestic house work and management, paid house rent, insurance and house shopping. The Respondent through email admitted that she contributed towards the purchase although he executed the transactions.
11. On the third issue, the Applicant submitted that the Respondent in his emails confirmed that the Applicant made significant contributions towards the purchase of the said properties and therefore, she is entitled to more than half of the properties. That the Respondent did not adduce any evidence to prove his contribution towards the purchase of these properties. She relied on the decision in [LWK vs. GMM](#) (2018) eKLR on the proportion of division of matrimonial property taken by the court.

Analysis And Determination

12. The following issues arise for determination;
 - i. Whether the properties constitute matrimonial property.
 - ii. Whether in the circumstances the Applicant is entitled to the orders prayed for.

Whether the properties amount to matrimonial property

13. On what constitutes matrimonial property, I am guided by Section 6 of the [Matrimonial Property Act](#) that defines matrimonial property as:
 - 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.
14. Basically, for property to qualify as matrimonial property, it must meet the definition in Section 6 quoted above. From the evidence available in court, it is clear to me that the Applicant and the Respondent solemnized their union in Nederland in Rotterdam on 24th July 2019. The Applicant argued that she started cohabiting with the Respondent in 2015 and did their traditional wedding in 2017. [Particulars Withheld] was purchased on 5th November 2019 while [Particulars Withheld] on LR No. [Particulars Withheld] was purchased on 22nd January 2021. The parties divorced on 15th March 2021. There is no doubt that the two properties were acquired during the subsistence of the marriage between the parties herein. The court is unable to discern when Plot No. [Particulars Withheld] and Plot [Particulars Withheld] were purchased. No documents have been furnished as proof of ownership.
15. Section 14(b) of the *Matrimonial Property Act* provides that:-
- Where matrimonial property is acquired during marriage—
- (b) in the names of the spouses jointly, there shall be rebuttable presumption that their beneficial interests in the matrimonial property are equal.
16. Parties seeking division of the matrimonial property are under an obligation to prove their contribution towards acquisition and development of the matrimonial property. In this context, either party is required under section 107 of the *Evidence Act* required to prove his/her contribution to the acquisition and development of the matrimonial property.
17. Under Section 2 of the *Act*, ‘Contribution’ has been defined to mean both monetary and non-monetary contribution. It will be noted that monetary contribution has not been defined under the Act but under the *Black's Law Dictionary Free Online 2nd Edition*, monetary is that which relates to money. Regarding, non-monetary contribution, the Act has defined it to include: Domestic work and management of the matrimonial home; Child care; Management of family business or property; and Farm work.
18. Section 7 of the *Act* provides 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.”
19. In *Federation of Women Lawyers Kenya (FIDA) v 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 law 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.”



20. In *UMM v 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).”

21. Based on the above cited legal provisions and court decisions, it is clear that despite the constitutional requirement that parties in a marriage have equal rights, each party must be able to prove monetary or non-monetary contribution lest a party will not be entitled to any share in the matrimonial property.
22. The Applicant told the court that she financed the purchase of the properties whereas the Respondent did not make financial input. Also, that she took care of the house rent, insurance, house shopping, financially supported the Respondent when he was planning to join her in Netherlands and even supported him when he arrived in Netherlands jobless. She added that she has been providing for the child of the marriage whereas the Respondent did not make any contribution.
23. To convince the court of her monetary contribution towards the matrimonial properties, the Applicant produced receipts showing money that was wired to the Respondent’s mobile number. She also produced conversations between her and the Respondent. With the absence of the Respondent’s evidence, I am convinced that the Applicant’s contribution towards the acquisition, of the matrimonial properties was immense. She made both monetary and non-monetary contribution.
24. In the finality, the following orders to issue;
 - a. That a declaration is hereby issued that 50% proportion of the properties listed below and held jointly by the Applicant and the Respondent.
 - i. [Particulars Withheld]
 - ii. [Particulars Withheld]
 - b. The Respondent shall have the 1st Option to buy out the Applicant by paying to her 50% of the purchase price of the assets within 90 days from the date hereof.
 - c. In the event that the Respondent elects not or is unable to pay the Applicant as stipulated under (b) above the Properties shall be sold by an Estate Agent commissioned by the Applicant and Respondent and the parties to share the proceeds, less expenses, estate agent fee and other costs related to the transaction within 30 days of communication from the Respondent that he will not be exercising his option under (b) above



- d. In the event the parties are unable to agree on an estate agent, the Applicant will solely identify and commission an estate and upon sale of the assets, the Applicant and Respondent shall share the proceeds, less expenses, estate agent fee and other costs related to the transaction within 30 days of the appointment of the agent
- e. This being a family matter, each party will bear their own costs
- f. Mention on 18th September 2024 to confirm compliance

SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 14TH DAY OF JUNE 2024.

P M NYAUNDI

JUDGE

In the presence of:

Fardosa Court Assistant

Ms. Kimani Advocates for the Applicant

Advocates for the Respondent

