



**MNJ v WCK (Matrimonial Cause E012 of 2022)  
[2024] KEHC 8509 (KLR) (5 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 8509 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
MATRIMONIAL CAUSE E012 OF 2022**

**G MUTAI, J**

**JUNE 5, 2024**

**BETWEEN**

**MNJ ..... CLAIMANT**

**AND**

**WCK ..... RESPONDENT**

**JUDGMENT**

1. The Claimant and the Respondent married on 25<sup>th</sup> April 2009 at the Holy Ghost Cathedral, Mombasa. Their union was blessed with two issues, a girl CNC, a girl aged 15 years and JKC, a born aged 13. The parties are respectively, a clinical officer and a dentist. The Claimant is an employee of the County Government of Kilifi, while the Respondent is in private practice.
2. The union between the Claimant and the Respondent was initially happy. However, in the course of time, their union broke down. The Claimant sought to have the union dissolved. The divorce court dissolved the marriage on 21<sup>st</sup> June 2022 on the grounds of cruelty alleged in the divorce petition. The Court awarded the Claimant the costs of the Petition.
3. Vide an originating Summons dated 19<sup>th</sup> September 2022 and filed on 22<sup>nd</sup> September 2022 instituted the cause the subject of this judgment. Vide the said cause, she seeks to have the properties acquired during coverture distributed between her and the Respondent on the basis that they are matrimonial properties.

**The Claimant’s Originating Summons**

4. In her pleadings, the Claimant sought the following orders:-
  - a. That a permanent injunction do issue restraining the Respondent, by himself, his employees, servants and/or agents from selling, disposing of, charging, mortgaging, pledging, alienating, wasting, damaging and/or otherwise howsoever interfering with all those pieces or parcels of



land known as Land Reference Number Group V 680 (Original Number Group V/635/7) Mnarani, Title Number Loc/10/2407, Kahuti Murangá, Title Number Kilifi/Mtondia/1248, Land Reference Number Group V/2148 (Original Group V/272) Mnarani, Land Reference Number Group V/2150 (Original Number Group V 272), Mnarani and Land Reference Number Group V/7R, Mnarani, Pending the hearing and determination of this suit.

- b. That a declaration be made that all those pieces or parcels of land known as Land Reference Number Group V 680 (Original Number Group V/635/7) Mnarani, Title Number Loc/10/2407, Kahuti Murangá, Title Number Kilifi/Mtondia/1248, Land Reference Number Group V/2148 (Original Group V/272) Mnarani, Land Reference Number Group V/2150 (Original Number Group V 272), Mnarani and Land Reference Number Group V/7R, Mnarani, registered in the name of the Respondent is owned jointly by the Claimant and the Respondent;
- c. That this Honourable Court be pleased to make a declaration that Title Number /Kilifi/Mtondia/4392 registered in the name of the Claimant is owned jointly by the Claimant and the Respondent;
- d. That pending the hearing and determination of this application/suit an order of mandatory injunction be made compelling the Respondent to forthwith vacate and/or remove his belongings out of Land Reference Number Kilifi/Mtondia/Squatter/50 belonging to the Claimant which was gifted to the Claimant by the Respondent in the pendency of their marriage and/or from threatening, intimidating or coming near the said parcel of land in any manner whatsoever within a distance of 100 metres pending the hearing and determination of this suit;
- e. That a declaration does issue that each party herein is entitled to the properties acquired during the subsistence of their marriage on a 50:50 basis. Further, this Honourable Court do proceed and apportion the said properties as follows: -
  - i. Matrimonial house on Land Reference Number /Group V/680 (Original Number Group V 635/7) Mnarani - to the Claimant exclusively;
  - ii. Matrimonial house on Land Reference Number Loc/10/2407 Kahuti, Murangá - to the Respondent exclusively;

The rest of the following properties to be shared among both parties in equal (50:50) basis:-

- i. Title Number Kilifi /Mtondia/1248;
- ii. Land Reference Number Group V/2148 (Original Number Group V/272), Mnarani;
- iii. Land Reference Number Group V/2150 (Original Number Group V/272), Mnarani;
- iv. Land reference Number V7R, Mnarani;
- v. Title Number /Kilifi/Mtondia/4392; and
- vi. Nissan Caravan KDA 655 C.
- f. That due to the possibility of deterioration, motor vehicle registration number KDA 655 C be forthwith valued, then sold out and the proceeds thereof be shared among the parties herein on a 50:50 basis;
- g. That the division to separate the interest in the properties be done within 90 days from the date of the judgment at the Respondent's cost;



- h. That the Respondent be ordered to transfer the Claimant's share in the property to her within 30 days from the date of division.
  - i. That in default, the Registrar High Court of Kenya be authorized to sign and execute any transfer documents in favour of the Respondent or any other person holding any title on behalf of the Claimant to effect all the orders of this Honourable Court in favour of the Claimant.
  - j. That an order does issue declaring the Respondent is accountable to the Claimant in respect of all the income derived from the said properties. In this regard, an order be made an account in the joint names of the Claimant and the Respondent be opened and all proceeds from the properties generating income be deposited thereat;
  - k. That this Honourable Court be pleased to order that the properties and the income derived from the same be settled in proportions 50:50 basis or in such other portion as the Honourable Court may order; and
  - l. That the costs of the Summons/suit be awarded to the Claimant.
5. The Originating Summons is premised on the grounds stated therein and in the Supporting Affidavit of the Claimant, sworn on 19<sup>th</sup> September 2022.

### **The Respondent's Response to the Originating Summons**

6. In response, the respondent filed a replying affidavit sworn on 13<sup>th</sup> October 2022. He stated that he started cohabiting with the Claimant in 2008 in his house until they officially married on 25<sup>th</sup> April 2009. He deposed that at that time, he was working while the Claimant was not and was the sole provider until 2010, when the Claimant got employed by the Ministry of Health and started earning a living. He stated that the Claimant ran a donor-funded community-based organization with his material and moral support. One of the ways he supported the Claimant was by buying her a saloon car, a Toyota Ractis KCQ 615F, which she used for the taxi business before the venture collapsed due to Covid 19 pandemic.
7. He denied that the Claimant made direct and/or indirect contributions. The Respondent stated that he solely acquired and developed the suit properties and catered for the family's needs, including providing shelter, food, and clothing and paying the school fees and medical expenses of the Claimant and the children, with very minimal contribution from her.
8. He stated that due to the nature of the Claimant's work, she was always away for extended periods of time, leaving him and the domestic staff to take care of the children.
9. He urged the court to find that the Claimant has not established a prima facie case to warrant the granting of the orders sought and dismiss the Summons.

### **The Claimant's Further Affidavit**

10. The Claimant filed a Further Affidavit sworn on 18<sup>th</sup> November 2022, in which she denied the contents of the Respondent's Replying Affidavit and reiterated the contents of her Supporting Affidavit. She stated that she ran a cosmetic shop and a community-based organization known as Connect to Retain. She bought herself a second-hand car, KCE 262 Z, with her savings and loan facility after experiencing frustrations from the Respondent, who denied her access and use of his two cars.



11. She further stated that she acquired Title No. Kilifi/Mtondia/4392 for herself after realizing the Respondent did not include her in any of the properties they had acquired, which she declared openly. She acquired the piece of land Title No. Kilifi/Mtondia/4393 in 2022 after their separation.
12. She reiterated that she has made direct and indirect contributions towards the acquisition and development of the subject properties and that she is entitled to at least 50% of the same and urged the court to allow the Originating Summons as prayed.

#### **Further Pleadings by the Parties**

13. The Respondent filed a Supplementary Affidavit sworn on 28<sup>th</sup> November 2022, in which he denied the contents of the Further Affidavit and reiterated the position in his Replying Affidavit. He averred that the applicant had not discharged the burden of proof on contribution towards the acquisition and development of the suit properties to warrant a 50:50 share, and if she is entitled to any share, it is not more than 1% and urged the court to find so.
14. The Claimant filed an affidavit in which she denied the contents of the respondent's Supplementary Affidavit. She reiterated that she made a direct and indirect contribution to the acquisition and development of the suit properties, and therefore, she is entitled to a substantial share thereof, and the suit properties ought to be distributed equally. The Claimant also filed a witness statement dated 6<sup>th</sup> June 2023.

#### **Hearing of the Originating Summons**

15. The summons was canvassed by way of viva voce evidence.

#### **The Claimant's Evidence**

16. The Claimant adopted all her affidavits as well as witness statements and documents therein as her evidence in chief. She reiterated her position that the suit properties were acquired during the subsistence of the marriage and that she had made both monetary and non-monetary contributions towards the acquisition and development of the same and stated that they ought to be shared equally among the parties.

#### **Evidence of the Respondent**

17. The Respondent also adopted his affidavits as his evidence and the documents therein. He also reiterated his position in the said affidavits. He stated that he had no claim over Title Nos. Kilifi/Mtondia /4392 and 4393, which are in the Claimant's name, despite the fact that they were acquired during the subsistence of the marriage. He testified that the Claimant bought them singlehandedly in 2019.

#### **Written Submissions of the Parties**

18. Once the hearing was closed the court directed parties to file their written submissions.

#### **Written Submissions of the Claimant**

19. The Claimant, through her advocates, Tindika & Company Advocates, filed written submissions dated 26<sup>th</sup> February 2024. The learned counsel for the Claimant, Mr Tindika, identified three issues as coming up for determination.



20. On whether the suit properties constitute matrimonial properties, counsel relied on section 6 of the [matrimonial property act](#) and submitted that the Claimant proved that all suit properties were acquired during the subsistence of marriage, thus constituting matrimonial property, save for Title No. Kilifi/Majaoni Squatter/50 which was a gift by the Respondent to the Claimant.
21. On the second issue whether the Claimant contributed to the acquisition and development of the suit properties, counsel relied on Section 2 of the [Matrimonial Property Act](#) and submitted that the Claimant established both monetary and non-monetary contribution towards the same.
22. On whether the Respondent tendered cogent and/or reliable evidence, counsel submitted that the Respondent did not produce any evidence to show when the properties were purchased and at what price; thus, his evidence was meant to mislead the court.
23. Regarding how the matrimonial properties herein should be distributed between the Claimant and the Respondent, counsel relied on Article 45(3) of the [Constitution](#) and Section 14 of the [Matrimonial Property Act](#) and submitted that properties registered in the Respondent's name were held in trust for the Claimant and ought to be distributed equally. Counsel also urged the court to allow the summons as prayed.

### **Respondent's Written Submissions**

24. The Respondent, through his advocates Oloo & Company Advocates, filed his written submissions dated 15<sup>th</sup> March 2024.
25. Counsel relied on Articles 40 (1) and 45(3) of the Constitution and submitted that equal rights to parties do not amount to a 50:50 share of the matrimonial property.
26. Further counsel relied on Section 3 of the [Evidence Act](#) and submitted the applicant has the burden of proof under Sections 107,108 and 109 of the said [Act](#), which she did not discharge. Counsel submitted on behalf of the Respondent that it was evident that all the suit properties were bought solely by the Respondent without the contribution of the Claimant. Counsel also submitted that the Claimant made no non-monetary contribution as she was gainfully employed and was away from home for extended periods of time, leaving the Respondent and domestic staff to take care of the home and the children.
27. Counsel urged the court to find that the Claimant is only entitled to 1% of the matrimonial home in Mnarani and dismiss the prayers for declarations sought with costs.

### **Analysis and Determination**

28. I have considered the Originating Summons, the responses thereto, the oral evidence of the parties, and the rival submissions by both counsels. It is now my duty to determine what orders ought to be issued based on the evidence and the law.
29. In my view, marriage is anchored, among other things, on love, affection and sympathy. It exists like a rolling wheel gathering property rights traceable to the spouses individually or collegially, after a stall. This view was contextualised in the thoughts of Margaret Puxon in her Article *Ownership of the Matrimonial Home* (1963), 107 Sol. J. 204, thus:-

“Marriage is a partnership of love, affection and sympathy which should come to an end when these perish. When the parties wed, the husband and wife vow in the wedding ceremony, “with all my worldly goods I thee endow,” and the joint ownership should be jealously



guarded both by written law and by popular sentiments. Consequently, when the husband and wife part, there should be a separation not only of heart and hand, but of goods as well, and unless there is such a separation, there should be no divorce.”

30. The Constitution of Kenya 2010 under Article 45(3) provides that:-

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

31. In the case of Joseph Ombogi Ogentoto v Martha Bosibori Ogentoto [2023] eKLR, the Supreme Court stated inter alia as follows:-

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 Tuiyott, 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. Section 7 of the Matrimonial Property Act provides:-

“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.”

33. On contribution, Section 2 of the Matrimonial Property Act provides that:-

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

- i. domestic work and management of the matrimonial home;
- ii. child care;
- iii. companionship;
- iv. management of family business or property; and
- v. farm work;”

34. In my view three issues arise for determination in this matter:-

1. Whether the properties the subject of this Claim are matrimonial properties;
2. If they are, whether the Claimant made monetary or non-monetary contributions towards their acquisition and development;
3. What orders should issue;



### **Are the suit properties matrimonial properties?**

35. Section 6(1) of the *Matrimonial Property Act*, 2013 defines matrimonial property as being

“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.”

36. In *TMW versus FMC* [2018]eKLR the Court said as follows:-

“Firstly, I shall determine whether the suit property falls in the category of matrimonial property. Turning the provisions of the *Matrimonial Property Act*, Section 6 of the *Matrimonial Property Act*, 2013 defines a matrimonial property to include the matrimonial home or homes, any household goods in the home or homes or any other property jointly owned and acquired during the subsistence of the marriage. Basically for property to qualify as matrimonial property, it ought to have been acquired during the subsistence of the marriage between the parties unless otherwise agreed between them that such property would not form part of matrimonial property. In the instant case, the marriage between parties herein commenced 1993 and was officiated through Kikuyu Customary Law in 2001. The property in question was acquired in 2010 and the same was acquired during the subsistence of the marriage between the parties herein. There is also evidence that the suit property was acquired for purposes of building a family home. As a result, there is no doubt whatsoever that the suit property including the Juja farm forms part of matrimonial property as far as the parties herein are concerned.”

37. From the evidence that was adduced, it is evident that the Claimant and the Respondent were married to each other from 25<sup>th</sup> April 2009 until 21<sup>st</sup> June 2022, when their union was dissolved with the issuance of the decree nisi of divorce. During this time, and as is evident from their testimonies, the following properties were acquired by the parties and registered as provided below: -

- a. Land Reference Number /Group V/680(Original Number Group V 635/7) Mnarani upon which the matrimonial home is erected in the name of the Respondent;
- b. Title Number Kilifi /Mtondia/1248 in the name of the Respondent;
- c. Land Reference Number Group V/2148 (Original Number Group V/272), Mnarani in the name of the Respondent;
- d. Land Reference Number Group V/2150 (Original Number Group V/272),Mnarani in the name of the Respondent;
- e. Land reference Number V7R, Mnarani in the name of the Respondent;
- f. Title Number/Kilifi/Mtondia/4392 in the name of the Claimant;
- g. Title Number/Kilifi/Mtondia/4393 in the name of the Claimant; and
- h. Title No. Kilifi/Mtondia/Squatter/50 in the name of the Claimant.



38. Section 14 of the *Matrimonial Property Act* provides;

“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.”

39. As these properties were acquired during coverture, they are matrimonial properties under the *Matrimonial Properties Act*, 2013.

40. Regarding the house said to have been erected on Land Reference Number Loc/10/2407 Kahuti, Murangá, this Court is not persuaded that it is a matrimonial property. No certificate of title was produced in support of the claim by the Claimant. It does appear to me that it is, as stated by the Respondent, an extension of his father’s homestead and is an ancestral property. In the circumstances I find and hold that it is not a matrimonial property.

41. It is common ground that Nissan Caravan KDA 655 C is registered in the name of a limited liability company co-owned by the parties. That being the case, the dispute about its possession cannot be determined by the Family Court as it is a commercial dispute. In a similar vein, I find and hold that it is not a matrimonial property.

#### **Did the Claimant Make Monetary and or Non-Monetary Contributions Towards the Acquisition of the Matrimonial Properties?**

42. Section 2 of the *Matrimonial Property Act* provides that:-

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

- i. domestic work and management of the matrimonial home;
- ii. child care;
- iii. companionship;
- iv. management of family business or property; and
- v. farm work.”

43. The court in the case of *MNH v FHM* [2018] eKLR stated:-

“What the *Matrimonial Property Act* of 2013 does is formalize and make provision for giving due consideration to both the monetary and non-monetary contribution of parties in a marriage as is evident from the clauses cited in the antecedent paragraphs. This position has been cemented by the Courts in different instances. For starters, in *NWM v KNM* (2014) eKLR it was stated that the court must give effect to both monetary and non-monetary contributions, that both the Applicant and the Respondent made during the currency of the marriage to acquire the matrimonial property.”



44. Further the court in the case of *AWM v JGK* [2021] eKLR in dealing with non-monetary contribution stated:-

“It is my considered view that the non-monetary contribution often-times cannot be quantified. If that contribution were to be reduced to monetary terms I am sure that a woman’s non-monetary contribution in the home would amount to a higher amount compared to that of the man. It is my finding therefore that the Applicant made monetary and non-monetary contribution towards acquiring the matrimonial property and that her non-monetary contribution is higher than that of the Respondent.”

45. I am alive to the fact that each case must be determined based on its own peculiar circumstances and based on the evidence presented. Indeed, the Court of Appeal had this in mind in *TKM v SMW* [2020] eKLR, where it is stated as follows:

“We bear in mind the edict in *Muthembwa v Muthembwa* (2002) 1 EA 186, and many other decisions reminding the courts that in assessing the contribution of spouses in acquisition of matrimonial property, each case must be dealt with on the basis of its peculiar facts and circumstances but bearing in mind the principle of fairness.”

46. With the above exposition of what I consider to be the applicable law I will now turn to the individual properties and determine whether the Claimant made contribution towards their purchase and or development. I will also make a determination in respect of the two parcels of land that the Claimant purchased and which the Respondent reckons must also be considered.

**Title No. Group V/680 (Original No. Group V/635/7) Mnarani**

47. It is evident that Title No. Group V/680 (Original No. Group V/635/7) Mnarani was purchased during the subsistence of the marriage and was used by the parties as a matrimonial home. Although the Respondent made most of the monetary contribution towards its purchase and development, the Claimant, who was employed and lived with the Respondent as his spouse, made non-monetary contributions. She took care of the home, cared for their children and provided a homely environment that made the Respondent thrive in his dental practice. I note that the Respondent was very meticulous in his record keeping and that any expense he incurred on behalf of the Claimant was reimbursed. Although this Court cannot precisely tell what each party’s monetary and non-monetary contribution is, the Court is guided by the equitable maxim that equality is equity. In the circumstances, this court declares that Title No. Group V/680 (Original No. Group V/635/7) Mnarani is jointly owned by the Claimant and the Respondent equally, on a 50:50 basis.

48. I am guided by the decision of the Court in *PWK v JKG* [2015] eKLR, where it was 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 proportions of financial contribution either direct or indirect towards the acquisition of the property. However, in cases where each spouse has made a substantial but unascertainable contribution, it may be equitable to apply the maxim Equality is equity while heeding the caution of Lord Pearson in *Gissing v Gissing* [1970] 2All ER 780 Page 788.”



#### **Title No. Loc/10/2407 Kahuti, Murangá**

49. The court notes that ownership of Title No. Loc/10/2407 Kahuti, Murangá is disputed. The Respondent averred that there is an extension to the main house owned by his father (now deceased). The Claimant, on the other hand, claimed that they put up their rural home on the said property and that there is a 4-bedroom permanent house on it. She produced a bank statement that appeared to show that she sent money that was used for construction. It would appear to the court that Title No. Loc/10/2407 Kahuti, Murangá is the ancestral home of the Respondent and his father owns it. The Court is inclined to believe the account of the Respondent that all that was constructed was an extension to the main house. The Claimant could have helped the Court by providing a copy of the search of the said property. In the circumstances, this court finds that the property is not a matrimonial property. Consequently, the same is not available for subdivision.

#### **Title No. Kilifi /Mtondia /Squatter/50**

50. Title No. Kilifi /Mtondia /Squatter/50 was purchased by the Respondent and registered in the name of the Claimant. The Claimant testified that the Respondent gave her the said property as a gift. The Respondent denied that it was meant for her. Although there is a rebuttable presumption that a gift belongs to the recipient absolutely, it is clear from the evidence that the gift was conditional. This is evidenced by the communication between the parties, especially that from the Respondent. In the circumstances, I declare the same is jointly owned by the parties equally on a 50:50 basis.

#### **Title No. Group V/7R Mnarani**

51. Title No. The Respondent acquired group V/7R Mnarani during coverture and was also developed during the subsistence of the marriage. The Claimant admitted that she made very little contribution towards its acquisition and development. The development was capital-intensive. The Claimant played no role in the construction. At the time of development, the marriage was rocky and was on its last days. In the circumstances, I declare that the Respondent is entitled to a large share of the said property. I thus declare that it is owned on an 85:15 basis in favour of the Respondent.

#### **Titles. No. Kilifi/Mtondia /4392 and 4393**

52. Titles. No. Kilifi/Mtondia /4392 and 4393 are registered in the name of the Claimant. Since the properties were purchased during the coverture, I find that the same is owned on a 70:30 basis in favour of the Claimant. Although the Claimant averred that Titles. No. Kilifi/Mtondia /4393 belonged to her exclusively it is evident from the title document that the same was registered in her name on 3<sup>rd</sup> February 2022, which was before the marriage was dissolved.

#### **Motor Vehicle Nissan Caravan KDA 655C**

53. Both parties concede that Nissan Caravan KDA 655C was used in the business of Chenass Co. Ltd, a limited liability company owned by both parties. This court is of the view that the affairs of a limited liability company are not within the province of the Family Court and, hence, lack jurisdiction to hear and determine them in these proceedings. In the circumstances, I find and hold that the said motor vehicle is not a matrimonial property. The parties are at liberty to pursue appropriate remedies before the commercial court.



### **Land Reference Nos. Group V/2148 and 2150 (Original Number Group V/272)**

54. Land Reference Nos. Group V/2148 and 2150 are in the name of the Respondent. Although they were registered in 2022 when the relationship was on its deathbed, it is evident that the acquisition process started earlier, as evidenced by the Wealth Declaration Forms of the Respondent that the Claimant provided. The evidence shows that the Claimant made very little contribution towards their purchase. In the circumstance, and just as I did with Titles. No. Kilifi/Mtondia /4392 and 4393, I declare them as matrimonial properties and order that they be divided on a 70:30 basis in favour of the Respondent.

### **Title No. Kilifi/Mtondia/1248**

55. Title No. Kilifi/Mtondia/1248 was acquired in 2012. It is registered in the name of the Respondent. Although the Claimant made no direct contribution, it is my view that she made a non-monetary contribution, which entitles her to share equal to that held by the Respondent. I, therefore, find and hold that it is owned equally by the parties equally on a 50:50 basis.

### **Disposition**

56. I direct that the properties I have identified as being jointly owned be valued within 60 days of the date hereof by a valuer jointly appointed by the parties. In the event, the parties are unable to agree, the valuation will be done by a government valuer. These properties are:-

- a. Title No. Group V/680 (Original No. Group V/635/7) Mnarani;
- b. Title No. Kilifi /Mtondia /Squatter/50;
- c. Title No. Group V/7R Mnarani;
- d. Titles. No. Kilifi/Mtondia /4392;
- e. Titles. No. Kilifi/Mtondia /4393;
- f. Land Reference Nos Group V/2148 (Original Number Group V/272);
- g. Land Reference Nos Group V/2150 (Original Number Group V/272); and
- h. Title No. Kilifi/Mtondia/1248.

57. The Claimant and the Respondent shall be at liberty to buy each other out, in respect of any of the properties I have identified as being matrimonial properties within 30 days of the date the valuation report is published.

58. If parties are unable or unwilling to buy each other within 30 days from the time the valuation report is prepared and published by the valuer, I direct that the properties, or whichever of them remains unsold, be sold by public auction. The proceeds therefrom shall be divided in the ratios I have identified.

59. As this is a dispute over properties between former spouses, an award of costs is not an appropriate remedy. Each party will, therefore, bear her /his own costs.

60. It is so ordered.

**DATED AND SIGNED AT MOMBASA THIS 5<sup>TH</sup> DAY OF JUNE 2024. JUDGMENT DELIVERED VIRTUALLY VIA MICROSOFT TEAMS.**

**GREGORY MUTAI**

**JUDGE**



In the presence of:-

Mr Tindika for the Claimant;

Mr Oloo for the Respondent; and

Arthur – Court Assistant.

