



**SKL v WKL (Civil Case E002 of 2022) [2024] KEHC 8490 (KLR) (10 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 8490 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAPSABET**

**CIVIL CASE E002 OF 2022**

**JR KARANJA, J**

**JUNE 10, 2024**

**BETWEEN**

**SKL ..... PLAINTIFF**

**AND**

**WKL ..... DEFENDANT**

**JUDGMENT**

1. This suit was commenced by the originating summons dated 25<sup>th</sup> February 2022 in which the Plaintiff/Applicant, SKL, seeks a declaratory order against the Defendant/ Respondent, WKL, to the effect that Land Parcels Numbers Nandi/Kamobo/18XX, Nandi/Kamobo/9XX and Nandi/Kamobo/5XX are matrimonial property.
2. The case for the Plaintiff was that in the year 1994 she and the Defendant started living together and in the year 1995 they contracted a customary marriage which was formerly registered in the year 2014. Along the way, the marriage developed cracks and became so stormy that the Plaintiff filed a divorce petition in the Magistrate's Court at Kapsabet being Divorce Case No. 10 of 2020. The marriage was effectively dissolved in August 2021.
3. The erstwhile couple was not blessed with any issue of the marriage but the Plaintiff had a son from a previous relationship whom the Defendant accepted and treated as his own son. Their matrimonial home was on Land Parcel Nandi/Kamobo/9XX which was developed by both of them.
4. The Plaintiff indicated that she left the matrimonial home following frequent threats and acts of assault against her by the Defendant even though she lived with the Defendant as his wife for more than thirty (30) years. She stated that the Defendant was a teacher and that he purchased and developed the matrimonial property and home with her assistance. She therefor prays for her share of the matrimonial property together with improvement thereon.
5. The case for the Defendant was that the Plaintiff became his wife in the year 2001, but they officially married in the year 2015. That the marriage was however, dissolved in the year 2021 following domestic



wrangles precipitated by the Plaintiff after the Defendant underwent a brain surgery in the year 2017. That, it was from that time that the Plaintiff engaged in acts of assault against the Defendant. She later left the matrimonial home and filed for dissolution of the marriage.

6. The Defendant contended that the Plaintiff is not entitled to any of his property as she did not assist in their acquisition and/or improvements and instead obtained loans to purchase items such as motor-cycles. The Defendant further contended that he never obtained any loan to acquire and develop his property as he was in a position to earn income from his farm and forest produce. He indicated that the only loan he obtained was from his Sacco as a teacher by occupation. He contended that he purchased some of his property from his retirement benefits.
7. The Defendant stated that the Plaintiff was abusive to him and did not tell the truth in court despite the fact that he treated her son as his own and educated him upto the time he finished school and was recruited into the prison services although his biological father was pointed out to him by the Plaintiff thereby bringing much shame to him (Defendant).
8. In her supporting affidavit dated 25<sup>th</sup> February 2022 the Applicant/Plaintiff averred that she was married to the Defendant for twenty six (26) years but was chased away from the matrimonial bed by the Defendant after she filed the divorce cause and emerged victorious. She, nonetheless, continued in occupation of one of the matrimonial property on which stands the matrimonial home.
9. The Plaintiff averred that the entire matrimonial property comprising of the Land Parcels No. Nandi/Kamobo/18XX, 9XX and 5XX are registered in the name of the Defendant, but that she occupied only one of the property on which her matrimonial home was established and also on which she grows tea plants for her upkeep, support and maintenance.
10. The Plaintiff averred and contended that she made contributions towards the development/improvement of all the aforementioned parcels of land and is therefore entitled to equal rights in the property. She therefore prays for a declaration of the court to that effect on ground that she made financial contribution towards the acquisition of the property. She exhibited several documents in support of her claim.
11. The Defendant/ Respondent's response to the Plaintiff's foregoing averments is contained in the replying affidavit dated 20<sup>th</sup> September 2022 in which the Defendant averred that the Plaintiff was initially his house girl working for him and his first wife, SC , but later became his wife when they married in the year 2014. That, the marriage was eventually dissolved pursuant to an order to that effect made by the court vide Kapsabet Divorce Case No. 10 of 2020.
12. The Defendant confirmed being the registered owner of the material parcels of land and averred that Parcel No. Nandi/Kamobo/9XX was acquired in 1982 long before marrying the Plaintiff and that Parcel No. Nandi/Kamobo/18XX was acquired in 1993 also before he married the Plaintiff. That, Parcel No. Nandi/Kamobo/5XX is ancestral land acquired in 1979 by the Defendant's deceased grandmother and for which he is registered in trust for the benefit of his sisters and brothers and is not therefore part of the matrimonial property being property which is inherited.
13. The Defendant averred that in the year 2017, he underwent a head surgery and lost consciousness for one year. Thereafter, after regaining consciousness he discovered that the Plaintiff had developed tea bushes on Parcel No. Nandi/Kamobo/9XX without his consent. He reprimanded and warned her against such action, but she proceeded to confiscate the title documents to Parcel No. Nandi/Kamobo/18XX and Nandi/Kamobo/9XX as well as to assaulting him thereby causing him to report the matter at Kapsabet Police Station.



14. The Defendant further averred that the Plaintiff and himself were not blessed with any issue but he assumed the role of a father to the Plaintiff's son Jackson Mutai, whom he educated and is now a working adult. That, the Plaintiff is not entitled to half or equal share of the matrimonial property as she did not contribute anything towards the acquisition of the property nor did she make substantial improvements on the property.
15. Both the oral and affidavit evidence foregoing raises two basic issues for determination, Firstly, whether the suit parcels of land form or are part of matrimonial property and Secondly, whether the Plaintiff/Applicant is entitled to a share of any or all the matrimonial property on account of having been married to the Defendant and/or on account of having contributed financially or otherwise towards the acquisition and/or improvement/ development of the property.
16. The *Matrimonial Property Act* (Cap 152 Laws of Kenya), is the statutory law which governs disputes relating to matrimonial property and together with Article 45(3) of the Constitution, provide the legal framework in the resolution of matrimonial property disputes. Article 45(3) of the Kenya Constitution, 2010 provides 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.”

For a substantial period of time it was pre-supposed that equality or equal rights in the distribution of matrimonial property meant distribution on a ratio of 50:50, so called “Nusu mkate” basis.

17. However, the uncertainty in the interpretation of the equality principle as enunciated in Article 45(3) of the Constitution was put to rest by the Supreme Court of Kenya (SCOK) in its recent decision in the case of *JOO v. MBO* (2023) KESC (4) (KLR), where it was held: -

“While Article 45(3) dealt with equality of the fundamental rights of spouses during and after dissolution of marriage, equality did not mean the redistribution of proprietary rights at the dissolution of a marriage. Neither did the reading of that provision lead to the assumption that spouses were automatically entitled to a 50% share by fact of being married.”

18. The Supreme Court emphasized that Article 45(3), was not designed for the purpose of enabling the court to pass property rights from one spouse to another by fact of marriage only. It stated that: -

“.....equality under Article 45(3) meant that the court were to ensure that at the dissolution of a marriage, each party to a marriage got a fair share of the matrimonial property based on their contention.

That was best done by considering respective contribution of each party to ensure no party was unfairly denied what they deserved as well as ensuring that no party was unfairly given more than what he or she contributed.”

19. Section 7 of the *Matrimonial Property Act*, alludes to ownership of matrimonial property in the following terms: -

“Subject to Section 6(3), ownership of matrimonial property rests 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.”



Section 9 of the Act provides that: -

“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 distribution made.”

Matrimonial Property is defined in Section 6(1) of the Act to mean: -

- “(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.”

The matrimonial home is defined under Section 2 of the Act to mean any property that is owned or leased by one or both spouses and occupied or utilized by the spouses as their family home and includes any other attached property.

20. Section 14 of the Act provides that: -

“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 beneficiary interest in the matrimonial property are equal.”

21. “Contribution” as defined in Section 2 of the Act means monetary and non-monetary contribution and include: -

- a. Domestic work and the management of the matrimonial home.
- b. Child care
- c. Companionship
- d. Management of family business or property and
- e. Farm work.

22. With regard to the first issue for determination, being whether the suit parcels of land do form or are part of the matrimonial property, the Plaintiffs evidence suggested that her interest was mainly on Parcel No. Nandi/Kamobo/9XX (Plot No. 9XX) comprising of her matrimonial home. She said that she left the home after being threatened and assaulted by the Defendant, a claim the Defendant denied and instead pointed an accusing finger at the Plaintiff.

23. Be that as it may, the Plaintiff conceded that the said Plot No. 9XX was acquired by the Defendant in the year 1982 long before she was married to the Defendant. Indeed a copy of the green card obtained from the land office and exhibited herein by the Defendant shows that the parcel of land belongs to the Defendant. However, the Defendant did not deny that their matrimonial home is on the said Parcel or Plot No. 9XX. In fact, he indicated that the Plaintiff carried out development of the land by planting tea bushes thereon while he was recuperating from a head injury much to his chagrin.



24. This implied that the Plaintiff contributed to the development or improvement of the Plot No. 9XX even though it was solely acquired by the Defendant prior to their marriage. In the circumstances, it may safely be stated that the Plaintiff acquired a beneficial interest in the property equal to the contribution she made (See, Section 9 of the *Matrimonial Property Act*).

Being the matrimonial home, the property was indeed part of the matrimonial property for which the Plaintiff would be entitled to a share by dint of her contribution to its development whether monetary or non-monetary or both, such share being equal to that of the Defendant regard being given to the long period of their nuptial union before its collapse in the year 2020 or 2021.

25. Indeed, there was no dispute or substantial dispute that the Plaintiff and the Defendant were married and were held out as such by all and sundry. The relationship which developed between them and led to their marriage may have germinated from the fatal attraction “exerted upon the Defendant by the Plaintiff while she worked for him and his first wife as a house girl or maid. It would appear that the Defendant was unable to resist the attraction and decided to upgrade” the Plaintiff from being a house girl to being his wife. There was nothing wrong with that. There is no law which forbids a male employer from marrying his female employee as long as it is mutually agreed.
26. Having found hereinabove that the Plaintiff would be entitled to a share of the matrimonial home equal to that of the Defendant on account of her contribution to the development and/or improvement of Parcel No. 9XX, it would follow that the second issue for determination is resolved in her favour with respect to that parcel of land and it is so declared.
27. As for Land Parcel No. Nandi/Kamobo/18XX (Plot No. 18XX), the Plaintiff did not make a formidable claim to it and in any event, the property was acquired by the Defendant before he effectively married her (i.e. in 1993) as established by the necessary green card exhibited herein by himself and there being no evidence from the Plaintiff that she made any form of contribution towards its development and improvement whatsoever, she would not be entitled to a share of the same. In any case, the property was not and did not form part of the matrimonial property for division between the Plaintiff and the Defendant. It therefore follows that both the first and second issues for determination would be resolved in the negative against the Plaintiff.
28. Similarly, Land Parcel No. Nandi/Kamobo/5XX (Plot No. 5XX) was not and did not form part of the matrimonial property to be shared between the Plaintiff and the Defendant. This is because the green card exhibited herein by the Defendant in respect thereof indicates that the property belongs to the Defendant and was acquired by him in the year 1980 before his marriage to the Plaintiff and that there was no evidence from the Plaintiff to establish and prove that she made any form of contribution towards its development and/or improvement.
29. The claim by the Defendant that the Plot No. 5XX is ancestral property held by him in trust on behalf of his siblings was disproved by the contents of the relevant green card. Nonetheless, the property did not form and was not part of the matrimonial property in whatever circumstances.
30. All in all, with regard to Parcels No. 18XX and No. 5XX, the Plaintiff’s claim in respect thereof was not proved as required and is hereby dismissed.

However, the claim respecting Parcel No. 9XX on which the matrimonial home is situated was proved as against the Defendant and is hereby allowed to the extent that the said Parcel No. 9XX shall be shared equally between the Plaintiff and the Defendant with an option of either party buying off the other party to retain the entire portion for himself or herself. Short of that, the property may be sold and the proceeds be shared equally between the parties.



Ordered accordingly.

**DATED AND DELIVERED THIS 10<sup>TH</sup> DAY OF JUNE, 2024**

**J. R. KARANJAH,**

**JUDGE**

