



**WAE v DOO (Family Miscellaneous Application E002 of 2023)
[2024] KEHC 7260 (KLR) (19 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 7260 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
FAMILY MISCELLANEOUS APPLICATION E002 OF 2023**

**KW KIARIE, J
JUNE 19, 2024**

BETWEEN

WAE APPLICANT

AND

DOO RESPONDENT

JUDGMENT

1. The applicant came to court by originating summons dated the 23rd day of February 2023. It was brought under sections 4, 7, 9, 14 and 17 of the Matrimonial Property Act No. 49 of 2013 and section 3A of the Civil Procedure Act, CAP. 21 Laws of Kenya. She is seeking the following orders:
 - a. A declaration that Land Parcel number Kanyada/Kanyango/Kalanya/8942, a resultant subdivision of Kanyada/Kanyango/Kalanya/823, is matrimonial property acquired jointly during the subsistence of the marriage between the applicant and the respondent.
 - b. That the respondent holds title number Kanyada/Kanyango/Kalanya/8942, a resultant subdivision of Kanyada/Kanyango/Kalanya/823 for himself and in trust for the applicant.
 - c. The applicant is entitled to 50% of the said property and all developments thereon plus the worth of Greatlakes Enterprises, which was also acquired jointly during the subsistence of their marriage.
 - d. That in the alternative and without prejudice to (a), b) & c) above, the applicant is entitled to a refund of her contributions towards the acquisition Kanyada/Kanyango/Kalanya/8942, a resultant subdivision of Kanyada/Kanyango/Kalanya/823 and developments thereon & growth of the net worth of Great Lakes Enterprises together with accrued interest thereon at the prevailing rates.
 - e. The costs of this application be provided for.



2. The application was premised on the following grounds:
 - a. The applicant and the respondent cohabited and subsequently married under Luo customary law.
 - b. The marriage was dissolved through divorce.
 - c. During the marriage, the duo purchased Kanyada/Kanyango/Kalanya/8942, a resultant subdivision of Kanyada/Kanyango/Kalanya/823, registered in the respondent's name in trust for the applicant.
 - d. The property was developed through their joint efforts.
3. The respondent opposed the application on the following grounds:
 - a. That the respondent is the sole registered proprietor of the property in issue.
 - b. That the applicant did not contribute to the acquisition of Kanyada/Kanyango/Kalanya/8942, a resultant subdivision of Kanyada/Kanyango/Kalanya/823. She also did not contribute to the growth of Great Lakes Enterprises.
4. There is a consensus that both parties cohabited and subsequently married under the Luo customary law. Their marriage hit some turbulence and was dissolved through a divorce. There will be no reason to belabour these facts.
5. Matrimonial property is defined in section 6 of the [Matrimonial Property Act](#) as:
 - (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.
 - (2) Despite subsection (1), trust property, including property held in trust under customary law, does not form part of matrimonial property.
 - (3) Despite subsection (1), the parties to an intended marriage may enter into an agreement before their marriage to determine their property rights.
 - (4) A party to an agreement made under subsection (3) may apply to the Court to set aside the agreement and the Court may set aside the agreement if it determines that the agreement was influenced by fraud, coercion or is manifestly unjust.
6. the first issue is establishing whether Kanyada/Kanyango/Kalanya/823 and the resultant parcel Kanyada/Kanyango/Kalanya/8942 are matrimonial property.
7. During their marriage, the couple bought a piece of land by obtaining individual loans through a sale agreement dated June 8, 2018, according to the applicant's assertion. The sale agreement indicated that the respondent was the purchaser. She signed the contract as a witness.
8. Whereas the respondent does not deny that the property was purchased during the pendency of their marriage, he claims that the property was solely his.



9. It is worth noting that witnessing a sale agreement does not give anyone doing so any proprietary rights. Friends can and have witnessed each other's sale agreements.
10. The applicant has not indicated when she took the loan or how much it was other than attaching a copy of her bank statement. She had a duty to do so. Instead, she left the court to sift through her statement, which runs from the 13th day of August 2019 to the 24th day of May 2022. This statement cannot help determine whether she contributed to the Kanyada/Kanyango/Kalanya/823 purchase on the 8th day of June 2018.
11. Therefore, I find that she has failed to establish that the said property was matrimonial.
12. The applicant claims that she used her earnings to pay for the upkeep and medical bills for the respondent's children and assisted in stocking the respondent's Greatlands Enterprises. She averred that she took loans to do so.
13. She may have contributed as she contended. To be fair to both parties, I will refer this matter to mediation.

DELIVERED AND SIGNED AT HOMA BAY THIS 19TH DAY OF JUNE 2024

KIARIE WAWERU KIARIE

JUDGE.

