



**ANK v PAO (Civil Suit E010 of 2022) [2024] KEHC 8546 (KLR) (12 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 8546 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT KIAMBU**  
**CIVIL SUIT E010 OF 2022**  
**A MSHILA, J**  
**JULY 12, 2024**  
**IN THE MATTER OF THE MATRIMONIAL PROPERTY**  
**AND**  
**IN THE MATTER OF THE LAND REGISTRATION ACT**  
**AND**  
**IN THE MATTER OF THE CONSTITUTION OF KENYA**

**BETWEEN**

**ANK ..... APPLICANT**

**AND**

**PAO ..... RESPONDENT**

**JUDGMENT**

1. This application is dated 25<sup>th</sup> February 2022 and has been brought to the court by way of Originating Summons under Article 43(3), 68(iii) of *the Constitution* of Kenya, 2020 and *Civil Procedure Act*. The Applicant sought for orders that;
  - a. Property known as L.R. NO 10901/20/1902, KAHAWA SUKARI Estate within Ruiru Municipality be deemed as matrimonial property.
  - b. The applicant be entitled to 50% of the property known as L.R. No.10901/20/1902.
  - c. A temporary injunction be issued restraining the Respondent, her servants and or agents from wasting, damaging, selling and transferring the said property.
  - d. The Respondent gives the Applicant an account of all proceeds from the property.
  - e. The Deputy Registrar be empowered to sign any documents that the Respondent may refuse to sign.



- f. The Respondent pays costs of these summons.
2. The Application is premised on the grounds that property L.R No 10901/20/1902 was acquired in the course of their marriage as a result of their joint effort and should be considered as matrimonial property despite the fact that the property is solely registered under the Respondent's name. The Respondent has frustrated all efforts towards an amicable resolution.
  3. The application is supported by the affidavit of ANK, he deposed that, the Respondent and himself were married under customary law in 2015 and were blessed with two issues. However, their marriage was dissolved on the 26<sup>th</sup> day August, 2021 in a court of law. The property in question is registered to the Respondent, Phoebe Achieng Oduor. The Applicant also deposed that the Respondent admitted in her previous affidavit that the subject property is a matrimonial home and that the Applicant was solely providing for the family which allowed the Respondent to save and invest.
  4. The application was opposed by a Replying Affidavit sworn by the Respondent, PAO. The Respondent deposed that the property described as L.R. No. 10901/20/1902, Kahawa Sukari Estate within Ruiru Municipality is not and has never been matrimonial property.
  5. The Respondent deposed that the property was an undeveloped piece of land, therefore, she and the Applicant did not live together as a family in said property. During their marriage, they lived in a rented apartment called Essy Flats House No. 12, located along Wangari Maathai Road. And therefore, this said apartment was their matrimonial home. The Respondent also deposed that on the 25<sup>th</sup> June 2019, the Applicant deserted the matrimonial home and stopped paying rent and therefore, the Respondent took up the rent obligation up until November 2020. The Respondent attached copies of receipt payments, marked as exhibit "PA01". She contended that the Applicant didn't make any indirect or direct contribution towards the purchase of the property and has failed to provide any evidence of the Applicant's contribution to the property in issue.
  6. The Respondent also stated that she solely sourced for the property and negotiated its acquisition but the Applicant declined to contribute towards the purchase despite numerous invitations from the Respondent to do so. Therefore, she ended up signing the Sale Agreement for the Property as the sole purchaser for the price of Kshs.3,500,000/=. She provided evidence of the Sale Agreement, marked as exhibit 'PAO2' and copies of receipts from the Financing Institutions that provided her with monies to make the purchase and for construction of the house on the property, marked as exhibit 'PAO3'. She begun construction of the house in May 2019 but after the Applicant deserted the matrimonial residence on the 25<sup>th</sup> June 2019, she stopped the construction of the house due to the strain of her finances as she was now paying rent for the apartment that they were living in as a family. In November 2020, the Respondent resumed construction of the house to make it more habitable at which point she and their two kids moved into the house despite the house being incomplete.
  7. Additionally, the Applicant was not a source of comfort and support but was in fact an abusive and violent partner. A fact that was well documented in their divorce proceedings. The Applicant owed the Respondent Ksh.545, 000/= which he has declined to refund. The Respondent believes that the suit before this court is out of malicious intent because the Respondent pursued legal proceedings in a Children's Court for child support as the Applicant is a neglectful parent.
  8. The court directed the parties to canvass the application by way of written submissions. Hereunder is a summary of the Applicant's Submissions dated 15<sup>th</sup> December 2023 and the 1<sup>st</sup> Respondent's Submissions dated 15<sup>th</sup> January 2024 in respect of the application.



## APPLICANT’S SUBMISSIONS

9. The Applicant submitted that the property herein is matrimonial property and that he is entitled to 50% of the property it having been purchased during the subsistence of their marriage. That he made an indirect contribution to the purchase and development of the property.

## RESPONDENT’S SUBMISSIONS

10. The Respondent submitted that the property herein is not matrimonial property; they did not live in this property as a family. The Respondent submitted that she solely took out loans to purchase the property. The Applicant has failed to produce documentary evidence whatsoever supporting his claim for monetary contribution.

## ISSUES FOR DETERMINATION.

11. After considering the written submissions, the main issues framed by this court to be determined are: Whether the property herein amounts to matrimonial property. Whether the Applicant contributed to the acquisition and development of the matrimonial property. Whether the Applicant has a 50% claim over the property herein.

## ANALYSIS

### Whether the property herein amounts to matrimonial property.

12. It is not in dispute that the parties were married under customary law in 2015 and were blessed with two issues and that their marriage was dissolved on the 26<sup>th</sup> day August, 2021 in a court of law. It is also not in dispute that the property herein was acquired during the pendency of their marriage. What is in contention is whether the property herein is matrimonial property.
13. The property herein, was indeed purchased and registered under the Respondent’s name during the pendency of their marriage.
14. Section 6 of the *Matrimonial Property Act* 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.
15. The parties herein generally agree that the property in Kahawa Sukari was acquired during the pendency of their marriage, what is in contention is the contribution of the Applicant given that the Respondent claimed that she solely acquired the property without the assistance of the Applicant.
16. The applicable law is found at Section 6 of the Matrimonial Properties Act which defines matrimonial home as;

" ... 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.
17. The parties in this matter, did not occupy and utilize the property known as L.R. No 10901/20/1902, Kahawa Sukari Estate within Ruiru Municipality as a family.



18. Having considered the evidence tendered by both parties this court is satisfied that the property known as L.R. No 10901/20/1902, Kahawa Sukari Estate within Ruiru Municipality is not a Matrimonial home and consequently not matrimonial property.

**Whether the Applicant contributed to the acquisition and development of the matrimonial property**

19. With regard to contribution, Section 7 of the *Matrimonial Property Act* is clear in its terms 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.”

20. The Applicant did not provide any evidence of non-monetary or monetary contribution to support his claim on how he took care of the Respondent and the family and took care of all their personal needs. The burden of proof in this case of establishing the ingredients for division and acquisition of matrimonial property lies with the Applicant.
21. This Court is satisfied that the Applicant failed to prove how he contributed to the acquisition and development of the matrimonial property.

**FINDINGS AND DETERMINATION**

22. For the forgoing reasons this court makes the following findings and determinations;
- i. This Court finds that the property known as L.R. No 10901/20/1902, Kahawa Sukari Estate within Ruiru Municipality was not a Matrimonial home and consequently not a matrimonial property.
  - ii. This Court finds that the Applicant failed to prove how he contributed to the acquisition and development of the subject property.
  - i. The application is found to be devoid of merit and it is hereby dismissed;
  - ii. Being a family matter and to bring closure each party shall bear their own costs.

Orders Accordingly.

**DATED SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 12<sup>TH</sup> DAY OF JULY, 2024.**

**A. MSHILA**

**JUDGE**

In the presence of;

Mourice – Court Assistant

Njuguna h/b for Juma Kagoro for the applicant

Kemboi h/b for Munene for the respondent

