



**PNG v LWV (Civil Case E076 of 2021)
[2024] KEHC 7969 (KLR) (Family) (4 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 7969 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
CIVIL CASE E076 OF 2021
HK CHEMITEI, J
JULY 4, 2024**

BETWEEN

PNG APPLICANT

AND

LWV RESPONDENT

JUDGMENT

1. This judgement relates to Originating Summons dated 25th October, 2021 filed by Philip Nyoro Gitau, the Applicant, seeking for ORDERS THAT:-
 - (a) The honourable court be pleased to declare the unidentified rental properties in Kangemi acquired and/or registered in the beneficial name of the Respondent as matrimonial property.
 - (b) The honourable court be pleased to declare any other unidentified properties acquired and/or registered in the beneficial name of the Respondent during the pendency of the marriage, as matrimonial property.
 - (c) The honourable court be pleased to issue an order compelling the Respondent to provide a comprehensive investment portfolio during the pendency of the marriage to ascertain her contribution in acquisition of the matrimonial property.
 - (d) The honourable court be pleased to fairly divide the following matrimonial property in accordance to contribution by each party:-
 - i. ¼ acre land Thika – Mwirukia farmers Co–op Plot 1076. Acquired July 2009.
 - ii. 1/8-acre land title number: Ngong/Ngong/ 43843. Acquired May 2011.
 - iii. 1/8-acre land title number: Ngong/Ngong/ 43844. Acquired may 2011.



- iv. 2-acre land KJD/Kaputei–central/25XX. Acquired June 2012.
 - v. ¾ acre land Nanyuki Marura Block4/XX. Acquired December 2012.
 - vi. ¾ land Nanyuki Marura Block4/XX. Acquired December, 2012.
 - vii. ¾ acre land Nanyuki Marura Block4/XX. Acquired December, 2012.
 - viii. Motor Vehicle Registration Number KBA 108Q (Nissan Sunny).
 - ix. The unidentified properties beneficial and/or registered in the name of the Respondent during the pendency of the marriage subject to order 1, 2 and 3 hereinabove.
- (e) The Respondent bears the costs of this suit.
- (f) Any other orders that this honourable court may deem fit to grant.
2. The matter proceeded by way of viva voce evidence and both the plaintiff and the defendant testified and did not call any witnesses. Their evidence can be summarized as hereunder.
 3. Philip Nyoro Gitautestified that Lilian Wairimu Wambugu, the Respondent, is his ex-wife with whom they have 3 children. They divorced in August, 2020.
 4. He relied entirely on the affidavit dated 25th October, 2024. He said that Lilian only gave him Kshs. 200,000/= in 2009 for purchase of land (Thika plot) that costed Kshs. 600,000/= and that she has never given him any other money.
 5. He went on to state that he first heard of the Kangemi property in 2017 when they were living together and she told him that she was doing some development in Kangemi. He made no direct contribution to this development, has received no direct benefit from it and does not know its land registration number. The Kangemi property is a leasehold and he did not mention it in his originating summons dated 25. 10. 2021 because he did not know its land registration number but he mentioned unidentified parcels of land.
 6. The Respondent provided the lease agreement for the Kangemi property dated August, 2017 for Dagoretti/Kangemi/291 which states that its rent for 1½ years is Kshs. 900 000/=. The property is not owned by the Respondent.
 7. He said that he wants the income from the Kangemi property to be shared because she acquired it during their marriage. He paid for rent, school fees. household expenses and holidays. They were both employed earning an almost equal salary. The Respondent had a medical cover from work. His formal employment ended in 2018 which is the year he left the home because they started to have problems when he left work.
 8. He went on that he was unable to develop the properties and Lillian was not agreeable to their amicable division. The magistrate in the children’s court ordered her to pay the bulk of the children’s expenses because she was earning more than him (Kshs.250,000/= from the Kangemi property). He had started a taxi business which went down during Covid–19 pandemic. The taxi business brought in revenue for the family.
 9. He asked the court to divide the properties equally and that he does not want to take away all the matrimonial property – the Respondent is entitled to her share. He contributed the bulk of the money towards their purchase. He registered the properties in their joint names because they were married though the Respondent has the title deeds for the parcels of land.



10. That he has in possession motor vehicle registration number KBA 108Q, whose value is about Kshs. 250,000/=, and his father is using it. It is valuable to his father. He gifted it to his father when they first separated in 2013.
11. He testified that he received Kshs. 71,000/= from the Respondent on 14th January, 2011 and the money was for family expenses not his personal use. Kshs. 10,000/=, Kshs. 15,000/=, Kshs. 5,000/= and Kshs. 12,000/= were sent to his Mpesanumber on diverse dates from their joint account. He took care of the children's non – financial needs between 2016–2018 when the Respondent was attending MBA evening classes which she graduated from in September, 2018. The third child was born when they had already separated. Their problems were mainly financially.
12. Lilian Wairimu Wambugu the Respondent testified that she works for a non – profit finance organization and lives at Mountain View Estate with her children aged 14, 11 and 9 years old. She and the plaintiff married in December, 2008, and separated in September, 2018 and divorced in September, 2022.
13. That the total school fees for the children is Kshs. 210,000/=. She pays 70% and he pays 30%. He pays Kshs. 10, 000/= per month for maintenance and she takes care of all other bills. She pays rent of Kshs. 82, 000/= and has leased out the SQ which earns her Kshs. 20,000/=.
14. She went on to testify that the applicant does not assist in paying rent. When they got married they were both earning about Kshs. 100,000/=. Her salary increased to Kshs. 220, 000/=. They pulled their resources and used the money together. He had access to her account.
15. On Kangemi land she said that she does not own it. She had leased it, in 2017, for 10 years and pays monthly rent. She built 7 permanent houses at Kangemi and earns Kshs. 220,000/= per month. She pays rent of Kshs. 50,000/=. It is not matrimonial property because it does not belong to her. The Respondent has never contributed towards that land. She took a loan for the Kangemi project when their marriage was deteriorating and he started a taxi business.
16. That they purchased the Thika land in 2009 during their marriage. She contributed Kshs. 200,000/= towards its purchase. She was nursing a baby when the Thika plot was purchased and he used their joint resources to develop it. The rest of the parcels of land were acquired during their marriage.
17. Motor vehicle registration number KBA 108Q was purchased before they married and she has no claim over it.
18. She urges the court to apportion the matrimonial property fairly (50%) considering that she is footing 70% of the children's expenses. She is holding the titles to the parcels of land. She contributed to their acquisition – Kshs. 200,000/= (Thika plot), Kshs, 150,000/=, Kshs. 40,000/= and Kshs. 100,000/=.
19. That all debts were acquired by the plaintiff and they used salary account to pay rent. She said that she went back to school to do her masters in 2018 which was paid for by her employer. They separated in 2012 and by this time, they had already acquired the properties. They reconnected in 2014 and resumed cohabitation. They did not acquire any properties jointly since 2014. He left the matrimonial home in 2018. They both had access to their accounts since they pooled resources.
20. The court directed the parties to file their written submissions which the applicant alone complied.
21. The applicant submissions dated 29th November, 2023 placed reliance on the following:
 - a. Section 2 of the *Matrimonial Property Act* which defines contribution to mean monetary and non – monetary contribution and includes: -



- (a) Domestic work and management of the matrimonial home.
 - b. Child care.
 - c. Companionship.
 - d. Management of family business or property.
 - (e) Farm work.”
- b. Section 7 of the [Matrimonial Property Act](#) which provides as follows:
- “...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.”
- c. Section 10 of the [Matrimonial Property Act](#) No. 49 of 2013 which provides as follows:
- (1) Any liability incurred by a spouse before the marriage and relating to the property shall, after marriage, remain the liability of the spouse who incurred it.
 - 2. Despite subsection (1), any liability that was reasonably and justifiably incurred shall, if the property becomes matrimonial property be equally shared by the spouses, unless they otherwise agree.
 - 3. Parties to a marriage shall share equally any:
 - a) Liability incurred during the subsistence of the marriage for the benefit of the marriage; or
 - b. Reasonable and justifiable expense incurred for the benefit of the marriage.”
 - d. Blacks Law Definition of an Asset to mean, “A financial contract or physical object with value that is owned by an individual, company or sovereign, which can be used to generate additional value or provide liquidity.”
 - e. Section 5 of the [Land Act](#), 2012.
 - f. [JOO v MBO: Federation of Women Lawyers \(FID Kenya\) & Another \(Amicus Curiae\) \(Petition 11 of 2020\)](#) [2023] KESC 4 (KLR) (Family) (27 January, 2023) (Judgment) where beneficial interest in matrimonial properties was addressed. The court further stated as follows:

“The guiding principle, again, should be that apportionment and division of matrimonial property may only be done where parties fulfill heir obligation of proving what they are entitled to by way of contribution. We thus approve the finding in Echaria that: “As the case law currently shows, the status of the marriage does not solely entitle a spouse to a beneficial interest in the property registered in the name of the other, nor is the performance of domestic duties. Even the fact that the wife was economical in spending on housekeeping will not do...”

“...Although indeed many marriages are built on happiness and mutual support, there are still many others where one spouse may be perpetually wasteful, uncooperative, distant and providing absolutely no warmth of companionship let alone financial contribution. It is



debatable whether such spouses should be taken to have earned the entitlement to 50% share of the property of the family at dissolution of the marriage.”

“103. In agreeing with the above decisions, we must note that, in a marriage, the general assumption is that both spouses share everything, and on the face of it, both parties contribute towards the home or family, in one way or another, to whichever extent, however big or small. Again, and further to this, both spouses may also work and earn income, which inevitably, at most instances, always ends up being spent on the family unit. It may be the whole income, or a substantial part of it, but ultimately, a percentage of it goes into the family. This is the essence of section 14 of the *Matrimonial Property Act*, 2013.

104. Therefore, 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 marriage, comfortably subsist in the marriage without making any 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.”

Analysis and Determination

22. I have carefully read the evidence of the parties herein and in my considered view it is clear that before filing for formal divorce they had ups and downs which led them separate and later reunite and finally divorced.
23. The evidence of the acquisition of the properties clearly demonstrate that both in one way or another contributed albeit the figures are varying. It is not possible from the evidence tendered to show with mathematical precision how much each one of them contributed.
24. It is however clear that whatever they contributed came from their formal employment, at least before the same were terminated or from their businesses including taxi business.
25. Obviously in the usual flower of marriage none of the parties anticipates divorce and or separation and therefore prepares the evidence of division of matrimonial property in advance. Some as demonstrated herein are scanty and it is for the court and the parties to patch up the pieces together and at least apportion each some percentage of contribution.
26. Looking at this matter i think it is fair to state that they both equally made almost equal contribution.
27. This court therefore orders that the matrimonial property either identified herein or elsewhere acquired before divorce shall be shared equally on 50;50 basis as hereunder:-
 - (A) ¼ Acre Land At Thika–karia Mwiriukia Farmers Cooperative Plot No1076 .
 - (B) 1/8 Acre Land At Ngong/Ngong/43843
 - (C) 1/8 Land At Ngong /Ngong /43844
 - (D) 2 Acre At Kajiado/Kaputiei-Central/25XX
 - (E) ¾ Land At Nanyuki/Marura Block 4/XX



- (F) ¾ Land At Nanyuli/Marura Block 4/XX
- (G) ¾ Land At Nanyuki/marura/Block 4/XX
- (H) Motor Vehicle Registration Number KBA 108Q (Nissan Sunny).

28. Being a family matter each party shall meet their respective costs.

DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 4TH DAY OF JULY 2024.

H K CHEMITEI

JUDGE

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