



**MCN v MCP (Matrimonial Cause E093 of 2022)  
[2024] KEHC 9626 (KLR) (Family) (7 August 2024) (Judgment)**

Neutral citation: [2024] KEHC 9626 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
MATRIMONIAL CAUSE E093 OF 2022  
SN RIECHI, J  
AUGUST 7, 2024**

**BETWEEN**

**MCN ..... APPLICANT**

**AND**

**MCP ..... RESPONDENT**

**JUDGMENT**

1 The applicant Millicent Chepkurui Ngetich and the Respondent Michael Chemorei Patal Mariam. On 2.5.2006 at the Registrar Office Nairobi. They were blessed with 2 issues of the marriage Daniel Kipkoech Chemorei born in 2005 and Vicky Chepchumba Chemorui born in 2016. Their marriage was dissolved in Milimani CM Division E 414/2021. The applicant the filed this Originating Summons dated 17.12.2021 seeking the following orders;

1. A Declaration be issued that all the under listed properties registered in the name of the Respondent or joint names of the Applicant and the Respondent with the developments thereon, all acquired and made during their marriage are matrimonial properties that is to say, parcels of land known as:
  - a. Nairobi / Block 105/5115
  - b. Kitale Municipality BLK 15/Koitogos/2551;
  - c. Kitale Municipality BLK 15/Koitogos/4126;
  - d. Kiambogo/ Kiambogo Block 2/21593 (Mwariki)
  - e. Kiambogo/ Kiambogo Block 2/21591 (Mwariki);
  - f. Nanyuki Marura Block 2/2377 (Kariunga);



- g. Nairobi / Block 140/263/032; and
  - h. Portion measuring 0.4047HA bought out of parcel of land known as Kapseret / Kapseret Block 4 (Lemok 'A'/9)
2. This Court be pleased to apportion the applicant's interest in parcel of land known as Nairobi / Block 105/5115, Kitale Municipality BLK 15/Koitogos/2551; Kitale Municipality BLK 15/Koitogos/4126; Kiambogo/ Kiambogo Block 2/21593 (Mwariki; Kiambogo/ Kiambogo Block 2/21591 (Mwariki;Nanyuki Marura Block 2/2377 (Kariunga); Nairobi / Block 140/263/032; and portion measuring 0.4047HA bought out of Kapseret / Kapseret Block 4 (Lemok 'A'/9).
  3. The joint ownership in respect of parcels of land known as Kitale Municipality BLK 15/ Koitogos/2551; Kitale Municipality BLK 15/KOTTOGOS/4126; Kiambogo/ Kiambogo Block 2/21593 (Mwariki; Kiambogo/ Kiambogo Block 2/21591 (Mwariki;Nanyuki Marura Block 2/2377 (Kariunga);and Nairobi / Block 140/263/032 be severed in terms of the declared interest and the same held absolutely by the parties.
  4. The Applicant's interest in the proportion declared above in respect of parcel of land Nairobi / Block 105/5115 be transferred to the Applicant and a Title issued thereto.
  5. In the alternative to prayer 4, the portion of parcel of land Nairobi / Block 105/5115 containing the main house be excised and registered in joint names of the parties as holding in trust for Daniel Kipkoech Chemorei and Vicky Chepchumba Chemorei, the children of the marriage and the Applicant's interest in the remainder be transferred to her.
  6. The Respondent be directed to sign all the necessary documents and instruments for transfer to the Applicant or severing of interest or ownership in parcels of land Nairobi / Block 105/5115; Kitale Municipality BLK 15/Koitogos/2551; Kitale Municipality BLK 15/Koitogos/4126; Kiambogo/ Kiambogo Block 2/21593(Mwariki); Kiambogo/ Kiambogo Block 2/21591 (Mwariki);Nanyuki Marura Block 2/2377 (Kariunga) and Nairobi / Block 140/263/032 in default the Deputy Registrar of the High Court be empowered to sign such documents and instruments as may be necessary in place of the Respondent.
- 7 Spent
- 8 Costs of these proceedings be provided for.
2. The application is supported by the application supporting affidavit sworn on 17.12.2021. The Respondent filed a Replying Affidavit sworn on 27.4.2022 denying the claim. The matter proceeded by way of Viva Voce evidence.
  - 3 Milicent Chepkurui Ngetich he applicant adopted her supporting affidavit sworn on 17.12.2021, supplementary affidavit on 28/7/2022 and the annexures as her evidence in chief.
  - 4 Briefly in her affidavit she depones that the property named in the originating summons were acquired during the subsistence of their marriage and through their joint efforts. She testified that when they married on 2.5.2006 she was working at State Law Office as head of ..... She confirmed that she as never been a full time house wife. On acquisition of the properties she was cross examined by Onguya for the Respondent.

It is trite law that whoever alleges must prove.



5 The onus of prove obviously rested on the applicant to prove both monetary contributions made and non-monetary contribution in acquisition and developments of the listed properties. The onus of proof however is subject to a presumption of law under Section 14 of Matrimonial Properties Act and it provides;

There is a presumption of law) 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 beneficial interest in the matrimonial property are equal."

The listed immovable properties in this cause are all registered in the name of the Respondent. The Respondent went to great lengths to show that she acquired the properties solely.

The Constitution of Kenya 2010 under Article 45(3) states that;

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

The constitutional provision does not however equate equal rights to a 50/50 sharing of assets but rather to the rights to be treated equally and fairly. The statute (Matrimonial Property Act) provide under Section 7 that;

" Ownership of 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."

The law therefore provide that in the event of divorce, the matrimonial property is divided between the spouses according to the contribution of each spouse. Section 2 of the same statute defines "contribution" as monetary and non-monetary and includes;

- a. domestic work and management of the matrimonial home.
- b. child care
- c. companionship
- d. management of family business or property and
- e. farm work

In the supreme court decision of The Supreme court of Kenya in Petition No 10 of 2020 Joseph Ombogi Ongetoto v Martha Bosibori Ogentoto [2023] agreed with Echaria case on the principles applied for distribution of matrimonial property. It stated thus: '[78]to our minds the finding in Echaria was essentially that a spouse does not acquire any beneficial interest in matrimonial property by fact of being married only and that specific contribution has to be ascertained to entitle such a spouse a share of the property.'

The court went on to emphasize that the spouse seeking a share in the matrimonial property has to prove the extent of his or her contribution to the acquisition or development of the property.



Also in Civil Appeal No. 142 of 2018 in [CWM-VS-JPM](#) [2017] eKLR, the Court of Appeal held as follows:

" ..... parties are of equal worth and human dignity, whatever their station in life. To the issue before us, it is obvious the appellant having been married for 18 years made some contribution to the family of Respondent at the time of such overture. In our view, that contribution, be it domestic work and management of the matrimonial home, child care or companionship falls within the definition of contribution under the Act".

Guided by the above authorities I will proceed to make the following and determination.

1. LR 105/5 115 – Utawala Property

The land measures  $\frac{1}{4}$  an acre one part developed with a mansionate and the rest undeveloped. Applicant did not contribute funds for the acquisition of property. On development of the property she deposited Ksh.2.2million to Respondent account on 18.11.2014 for completion of the house. The respondent on his part had taken a loan of 3.1 million for the construction. They managed to construct 2 houses for rental by agreement. Applicant collects rent in respect of one house while respondent collects rent for the other house. The respondent in his evidence confirmed that the applicant contributed Ksh.4million.

2. LR 140/263/032

The applicant in relation to this property confirmed that it was acquired already developed. She did not make any financial contribution except that she was a guarantor to Respondent's loan application. The respondent confirmed that property is still charged to Absa Bank.

3. Kitale Municipality Block 15/Koitogos 2251

The Property is jointly owned and it was previously ancestral land which was sold by brother of Respondent and they reclaimed it. Applicant paid Ksh3,300,000/- The Respondent confirmed that he did not make any payment to the buyer of the Property from Maina who had bought it.

4. Kitale Municipality Block 15/Koitogos/4126

The Property is registered in the joint names of applicant and respondent. It was acquired for Ksh1.8 million. The applicant stated she contributed Ksh.600,000 towards the purchase price. The Respondent confirmed of Ksh.600,000 to the purchase price of Ksh.1.8 million.

5. Kiambogo/ Kiambogo Block 2/21593. (Mwariki Property) and Kiambogo/ Kiambogo Block 2/21591

The property is registered in their joint names. The applicant confirmed she did not make any financial contribution to the purchase of the property. The Respondent testified that he bought the two plots. He however proposes that the Court award applicant No. Kiambogo/ Kiambogo Block 2/21593 and Respondent to retain Kiambogo block 2/21591 Mwariki.

6. Nanyuki Nafula Block 2/2377 – Karungu

The applicant confirmed she did not make any financial contributed to the acquisition. The respondent confirmed he bought the property from Chai Sacco.

7. Part of Parcel of land known as Kapseret / Kapseret Block 4 Chemok A/9



The applicant did not state her contributions to the purchase of the property. The respondent confirms that the land is in the name of Mr. and Mrs. Buibui. This property is not in the name of either the applicant or Respondent but in the name of 3<sup>rd</sup> party. The Property cannot therefore be available for distribution under the *Matrimonial Property Act*.

Upon considering all the evidence I declare the Applicant and Respondent distribute the properties as follows:

1. LR Nairobi / Block 105/5115 UTAWALA  
– Applicant 50% - Respondent 50%
2. Nairobi / Block 140/263/032– Respondent -100%
3. Kitale Municipality BLK 15/Koitogos/2551;  
Applicant - 100%
4. Kitale Municipality BLK 15/Koitogos/4126;  
– Application 30% Respondent 70%
5. Kiambogo/ Kiambogo Block 2/21593  
- Applicant – 50%, Respondent – 50%
6. Kiambogo/ Kiambogo Block 2/21591  
– Respondent – 50% Applicant – 50%,
7. Nanyuki Marura Block 2/2377 (Kariunga);–  
Respondent – 100%

**DATED AT NAIROBI THIS 7<sup>TH</sup> DAY OF AUGUST 2024.**

.....

**S. N. RIECHI**

**JUDGE**

