



**VWK v JKM (Matrimonial Cause E053 of 2021)  
[2024] KEHC 9670 (KLR) (Family) (7 August 2024) (Judgment)**

Neutral citation: [2024] KEHC 9670 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**FAMILY**

**MATRIMONIAL CAUSE E053 OF 2021**

**SN RIECHI, J**

**AUGUST 7, 2024**

**BETWEEN**

**VWK ..... APPLICANT**

**AND**

**JKM ..... RESPONDENT**

**JUDGMENT**

1. The applicant has filed a summons dated 2<sup>nd</sup> September 2021 pursuant to Article 45 (3) of *the Constitution* of Kenya 2010, Section 4, 6(1), 7, 17(1), 17(2)(a) of the *Matrimonial Property Act* No. 49 of 2013, and all other enabling provisions of the Law seeking orders that this court determine questions ;
  1. Whether Nairobi/block 117/420 Kamiti, Kayole Estate-title Number D5 209, Stall Number E4 Kahawa West Market & Naromoru/nyeri are matrimonial properties.
  2. Whether the applicant contributed towards acquisition of Nairobi/block 117/420 Kamiti, Kayole Estate-title Number D5 209, Stall Number E4 Kahawa West Market & Naromoru/nyeri
  3. Whether all that property Nairobi/block 117/420 Kamiti, Kayole Estate-title Number D5 209, Stall Number E4 Kahawa West Market & Naromoru/nyeri should be distributed equally between the parties herein.
2. The grounds in support of the Summons are found on the face of the Application and in the Supporting Affidavit sworn by the Applicant on 2<sup>nd</sup> September 2021. The Applicant states that she got married to the applicant on 13<sup>th</sup> September, 1980 at the CPK Maragua Parish in Muranga and they were divorced by a decree nisi dated 20<sup>th</sup> August, 2021. That the properties set out herein above



were acquired by the direct efforts of the Applicant and the Respondent during the course of their marriage. That the Respondent has expressed his intention to sell the matrimonial properties without the Applicant consent. Further that it is in the best interest of justice that the orders sought are granted. The Applicant has also sworn an affidavit dated on even date in support.

3. The Respondent has opposed this Originating Summons and he filed undated Replying Affidavit. The respondent briefly stated he has been engaged continuously in gainful employment all his life both in Kenya at Kenyatta University from 1980 to 1989 as an accounts clerk in charge of stores and thereafter he worked as church minister from 1990 to 2001 with the Anglican Church of Kenya (ACK) and then he moved to the United States of America where he continued working with the same church (Episcopal Church of America) from 2001 till my retirement in 2012. The respondent stated that as such he was seized of the means, including resources and finances not only to provide for my family and put all his children through school but also to make some modest investments in the subject properties here in Kenya to cater for his needs. The respondent stated that the properties erroneously cited by the Applicant as joint properties were acquired and developed solely from his efforts and resources without any of contribution from the Applicant whatsoever, whether financial, material or otherwise.
4. This matter was heard by way of viva voce evidence. The applicant Veronica Waithera Karanja testified she was married to the respondent in 1980 and they have seven children. She testified that in 1985 she was employed in Kenyatta University under Students Accommodation Board. The applicant stated the appointment letter is dated 1990. She testified they have joint properties being:
  1. Kayole-D5-201-PLOT
  2. Nairobi Block 117420/Kamiti Farming
  3. Stall within Kahawa West Market
  4. Inheritance of their late father in law in Narumoru-Land.She testified that they purchased the three properties in the 80s.
  1. Kayole Plot-it was allocated in 1982. That it is the respondent who was allocated. In the allotment the respondent and the applicant were registered.
  2. NAIROBI/BLOCK 117/420 KAMITI was bought in 1987. She stated they jointly borrowed money from sacco. She stated it is registered in the name of Respondent. She testified that she borrowed Kshs.13,000/= to enable them build the house. The applicant testified that the respondent went to Bible School and she was supporting the family. She testified further that in 1990 they found the house to be small and she borrowed money Kshs.10,000/= to extend the house.
  3. The stall leased from City County. She testified they bought the stall.
5. The applicant testified that during the subsistence of the marriage they were living in NAIROBI/BLOCK 117/420 KAMITI. She testified that they had a joint account in National Bank and when they moved to U.S in 2005, they had another joint account in U.S.A. The applicant testified that she participated in the purchase of the 3 properties. She testified that she borrowed money from the Sacco and Merry go-round. She testified The applicant has filed a summons dated 2<sup>nd</sup> September 2021 pursuant to Article 45 (3) of *the Constitution* of Kenya 2010, Section 4, 6(1), 7, 17(1), 17(2)(a) of the *Matrimonial Property Act* No. 49 of 2013, and all other enabling provisions of the Law seeking orders that this court determine questions ;



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  3. Whether all that property Nairobi/block 117/420 Kamiti, Kayole Estate-title Number D5 209, Stall Number E4 Kahawa West Market & Naromoru/nyeri should be distributed equally between the parties herein.
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7. The Respondent has opposed this Originating Summons and he filed undated Replying Affidavit. The respondent briefly stated he has been engaged continuously in gainful employment all his life both in Kenya at Kenyatta University from 1980 to 1989 as an accounts clerk in charge of stores and thereafter he worked as church minister from 1990 to 2001 with the Anglican Church of Kenya (ACK) and then he moved to the United States of America where he continued working with the same church (Episcopal Church of America) from 2001 till my retirement in 2012. The respondent stated that as such he was seized of the means, including resources and finances not only to provide for my family and put all his children through school but also to make some modest investments in the subject properties here in Kenya to cater for his needs. The respondent stated that the properties erroneously cited by the Applicant as joint properties were acquired and developed solely from his efforts and resources without any of contribution from the Applicant whatsoever, whether financial, material or otherwise.
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in 1990 they found the house to be small and she borrowed money Kshs.10,000/= to extend the house.

3. The stall leased from City County. She testified they bought the stall.
9. The applicant testified that during the subsistence of the marriage they were living in NAIROBI/ BLOCK 117/420 KAMITI. She testified that they had a joint account in National Bank and when they moved to U.S in 2005, they had another joint account in U.S.A. The applicant testified that she participated in the purchase of the 3 properties. She testified that she borrowed money from the Sacco and Merry go-round. She testified that she used to pay school fees and respondent could assist but she was paying the higher part.
10. During cross examination the applicant stated that she started working in 1985. She stated that she was employed as a custodian/housekeeping at Student Accommodation Center. The applicant stated that she was earning Kshs.5000/=. The applicant stated that between 1980-1985 she did not have income.
11. The appellant testified further that she became a copy typist in 1989 and her salary was Kshs.6000/=. The applicant stated that at the time they got married the respondent was not working and his brother was supporting them. The applicant stated that the respondent was employed by Kenyatta University in 1984 and she used to go to the market and sell goods. The applicant confirmed that when she was employed in 1985 and they had a house girl.
12. The applicant stated further that she moved to the USA in 2005 and between 1985 -2005 she did not acquire property in her name. The applicant stated that in 2002 they bought land in Juja and it is in her name.
13. The applicant stated further that the Kayole plot was acquired by the respondent between 1882 and 1883. The appellant stated that she participated in balloting and she does not have documents. The applicant stated that the respondent removed her name from the documents.
14. The applicant testified that the Kayole property was not acquired in 1986 and the plot was developed. She stated that they have built rental apartments. She stated they are single rooms but cannot remember how many are but cannot be less than 10.
15. The applicant stated that Kamiti Property was matrimonial home. There are apartments being built. She stated that they moved to the home in 1986. It had been built. The respondent was employed gaining salary at that time.
16. The applicant stated further the respondent was not employed in KU in 1980. He left to US in 2001. The matrimonial home had developed. The applicant stated the letter dated 1.9.2021 from KU states that she was employed from 1.7.1990 upto 31.9.2005. The applicant confirmed that she does not have letter for prior employment by UON.
17. The applicant stated that it is not true that the property in Kayole and Kamiti were developed before she started working. She confirmed that she has no documents to show that Kshs.13,000 and Ksh.10,000 was used for development of the properties.
18. The applicant stated that she has a right to have a share of Narumoru property. She stated it is an inheritance and the property belonged to her father in law. The applicant stated the respondent has inherited the property and the respondent had a house in it when she was married. The applicant stated that her father in law is deceased and succession has not been done. The applicant stated that she does not own a house in Ruiru and an apartment in Ngong. The applicant confirmed that she does not have evidence of a joint account in Kenya.



19. The respondent testified that he was gainfully employed by Kenyatta University in 1980. That the applicant was not employed at time of marriage. She did not have any property. The respondent stated that he acquired the Kayole Property in 1987. It was allotted to him. The applicant's name is not there and he did balloting himself. He stated that he developed it by 1990. The respondent stated it was not matrimonial home and he pay rates for the property. The property has seven single rooms and he collects rent. The respondent stated that the applicant did not participate in the construction and she did not give him money.
20. The respondent testified that for Kamiti property he built it in 1988-1990. He testified that for the stalls in Kahawa west it is a council stall and he pay Kshs.600 to the county. The tenant is using it for selling clothes.
21. The respondent stated that he moved to US in 2001 and appellant joined him in 2005 but he came back in 2012. The respondent stated that they have seven children and younger one is 34 years and none of them is dependent on him or appellant. They are working and respondent educated them.
22. The respondent testified that that he was employed as a pastor in Anglican Church in America. The respondent stated that the appellant has never wanted her name to be included in the properties.
23. During cross examination by Ms.Awour the respondent confirmed that they married in 1980. He stated that he was employed as a clerk at Kenyatta University and he was earning Kshs.2000 and net of about 1300. He stated that he worked there for 8 years between 1980-1988.
24. The respondent stated that he went to study theology on scholarship for 3 years from 1988 -1991 and he was being given Kshs.1500 every month. The respondent stated that while in college the applicant supported the children.
25. The respondent testified that for Kayole property he purchased it in 1987 and he was married to the applicant. The respondent stated it was an allotment and he paid fees and he built iron sheet rooms from his college savings.
26. The respondent testified that for Kamiti property he purchased it in 1986 for Kshs.30,000/=. The respondent stated that he was earning about Kshs.5,000 and over. He stated that he took a loan of Kshs.30,000/= and paid at once. The respondent stated that he has produced receipt of payment as exhibit 8.
27. The respondent stated that he took a loan from the university sacco and it is not true that he was not employed at KU. The respondent testified that he developed the property between 1986-1988 and he used Kshs.1500 to develop the semi-permanent house from his savings. The respondent testified that it had 4 rooms and that is where they stayed with the applicant and their children.
28. The respondent stated that in 2010 he demolished the house and he is building 22 permanent rooms. There is no other house on the property. He stated that he demolished the mud house and did not inform the applicant. The respondent stated he did not inform the applicant that he is constructing. The respondent stated the applicant was developing her own property at Ruiru and they had a party there when their son was wedding. The respondent stated that he stays in Kamiti and he has four rooms. He stated that he has other children who stay with him and his wife on the property.
29. The respondent stated that he acquired the Kahawa West Stall in 1990 when he was still married to the applicant. He stated that he paid Kshs.70,000/= and it is developed by the council and there is somebody renting it. The respondent stated that he was in the college then and the applicant was caring for her children and buying her own properties. The respondent stated further that in 1990 applicant was employed as a cleaner earning about Kshs.350. The respondent stated that the property is about ½



- acre. The applicant stated that they were using the rest of the land for cultivating and he collected Kshs.600 for 2 rooms occupied. The respondent stated that each tenant now pays Kshs.3000 and other rooms are empty and they have not been occupied for 2 years and he constructed them in 2012 and he was still married to the applicant.
30. The respondent stated that he fenced the property in 1987 and it has a permanent wall and which he constructed in 2013. The respondent stated that it costed him about Kshs.150,000/=. The respondent stated he did not receive Kshs.1 million from the applicant. He stated he never shared rent with applicant. The respondent stated that they never had a joint account. The appellant stated the Kamiti property has a share certificate and he pays land rates. He stated that the property is his until he dies is when he will leave it to them.
  31. The parties also filed their respective written submissions in which they reiterated averments in their affidavits and I do not need to reproduce them here. I have carefully analyzed and considered the submissions and case law in support.
  32. From the pleadings, the main issues for determination are as follows;
    - i. Whether the subject properties herein amount to matrimonial properties and if so whether the Applicant contributed towards the acquisition and the development of the matrimonial properties.
    - ii. Whether the Applicant is entitled to an equal share or such higher proportion of the matrimonial properties.

#### **Whether the subject properties herein amount to matrimonial properties**

33. On what constitutes matrimonial property, I am guided by Section 6 of the *Matrimonial Property Act* that 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.
34. For property to qualify as matrimonial property, it must meet the definition in Section 6 quoted above. From the evidence available in court, it is clear to me that the Applicant and the Respondent solemnized their union in 1980. The parties herein in their testimony did not dispute the fact that the subject properties were acquired during subsistence of their marriage.
35. The applicant has filed a summons dated 2<sup>nd</sup> September 2021 pursuant to Article 45 (3) of *the Constitution* of Kenya 2010, Section 4, 6(1), 7, 17(1), 17(2)(a) of the *Matrimonial Property Act* No. 49 of 2013, and all other enabling provisions of the Law seeking orders that this court determine questions ;
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  48. The applicant stated that she has a right to have a share of Narumoru property. She stated it is an inheritance and the property belonged to her father in law. The applicant stated the respondent has inherited the property and the respondent had a house in it when she was married. The applicant stated that her father in law is deceased and succession has not been done. The applicant stated that she does not own a house in Ruiru and an apartment in Ngong. The applicant confirmed that she does not have evidence of a joint account in Kenya.
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66. that she used to pay school fees and respondent could assist but she was paying the higher part.
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75. The applicant stated that she has a right to have a share of Narumoru property. She stated it is an inheritance and the property belonged to her father in law. The applicant stated the respondent has inherited the property and the respondent had a house in it when she was married. The applicant stated that her father in law is deceased and succession has not been done. The applicant stated that she does not own a house in Ruiru and an apartment in Ngong. The applicant confirmed that she does not have evidence of a joint account in Kenya.
76. The respondent testified that he was gainfully employed by Kenyatta University in 1980. That the applicant was not employed at time of marriage. She did not have any property. The respondent stated that he acquired the Kayole Property in 1987. It was allotted to him. The applicant's name is not there and he did balloting himself. He stated that he developed it by 1990. The respondent stated it was not matrimonial home and he pay rates for the property. The property has seven single rooms and he collects rent. The respondent stated that the applicant did not participate in the construction and she did not give him money.
77. The respondent testified that for Kamiti property he built it in 1988-1990. He testified that for the stalls in Kahawa west it is a council stall and he pay Kshs.600 to the county. The tenant is using it for selling clothes.
78. The respondent stated that he moved to US in 2001 and appellant joined him in 2005 but he came back in 2012. The respondent stated that they have seven children and younger one is 34 years and none of them is dependent on him or appellant. They are working and respondent educated them.
79. The respondent testified that that he was employed as a pastor in Anglican Church in America. The respondent stated that the appellant has never wanted her name to be included in the properties.
80. During cross examination by Ms.Awour the respondent confirmed that they married in 1980. He stated that he was employed as a clerk at Kenyatta University and he was earning Kshs.2000 and net of about 1300. He stated that he worked there for 8 years between 1980-1988.



81. The respondent stated that he went to study theology on scholarship for 3 years from 1988 -1991 and he was being given Kshs.1500 every month. The respondent stated that while in college the applicant supported the children.
82. The respondent testified that for Kayole property he purchased it in 1987 and he was married to the applicant. The respondent stated it was an allotment and he paid fees and he built iron sheet rooms from his college savings.
83. The respondent testified that for Kamiti property he purchased it in 1986 for Kshs.30,000/=. The respondent stated that he was earning about Kshs.5,000 and over. He stated that he took a loan of Kshs.30,000/= and paid at once. The respondent stated that he has produced receipt of payment as exhibit 8.
84. The respondent stated that he took a loan from the university sacco and it is not true that he was not employed at KU. The respondent testified that he developed the property between 1986-1988 and he used Kshs.1500 to develop the semi permanent house from his savings. The respondent testified that it had 4 rooms and that is where they stayed with the applicant and their children.
85. The respondent stated that in 2010 he demolished the house and he is building 22 permanent rooms. There is no other house on the property. He stated that he demolished the mud house and did not inform the applicant. The respondent stated he did not inform the applicant that he is constructing. The respondent stated the applicant was developing her own property at Ruiru and they had a party there when their son was wedding. The respondent stated that he stays in Kamiti and he has four rooms. He stated that he has other children who stay with him and his wife on the property.
86. The respondent stated that he acquired the Kahawa West Stall in 1990 when he was still married to the applicant. He stated that he paid Kshs.70,000/= and it is developed by the council and there is somebody renting it. The respondent stated that he was in the college then and the applicant was caring for her children and buying her own properties. The respondent stated further that in 1990 applicant was employed as a cleaner earning about Kshs.350. The respondent stated that the property is about ½ acre. The applicant stated that they were using the rest of the land for cultivating and he collected Kshs.600 for 2 rooms occupied. The respondent stated that each tenant now pays Kshs.3000 and other rooms are empty and they have not been occupied for 2 years and he constructed them in 2012 and he was still married to the applicant.
87. The respondent stated that he fenced the property in 1987 and it has a permanent wall and which he constructed in 2013. The respondent stated that it costed him about Kshs.150,000/=. The respondent stated he did not receive Kshs.1 million from the applicant. He stated he never shared rent with applicant. The respondent stated that they never had a joint account. The appellant stated the Kamiti property has a share certificate and he pays land rates. He stated that the property is his until he dies is when he will leave it to them.
88. The parties also filed their respective written submissions in which they reiterated averments in their affidavits and I do not need to reproduce them here. I have carefully analyzed and considered the submissions and case law in support.
89. From the pleadings, the main issues for determination are as follows;
  - i. Whether the subject properties herein amount to matrimonial properties and if so whether the Applicant contributed towards the acquisition and the development of the matrimonial properties.



- ii. Whether the Applicant is entitled to an equal share or such higher proportion of the matrimonial properties.

**Whether the subject properties herein amount to matrimonial properties**

90. On what constitutes matrimonial property, I am guided by Section 6 of the *Matrimonial Property Act* that 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.

91. For property to qualify as matrimonial property, it must meet the definition in Section 6 quoted above. From the evidence available in court, it is clear to me that the Applicant and the Respondent solemnized their union in 1980. The parties herein in their testimony did not dispute the fact that the subject properties were acquired during subsistence of their marriage.

1. Kayole-D5-201-PLOT

The plot is registered in the name of the Respondent. The Plot was allocated to the Respondent in a lottery in 1982. The applicant stated that the applicant and the Respondent were registered as owners. The Respondent confirmed and produced evidence that the plot is registered in his name. The plot was developed by him where he built 7 single rooms from which he collects rental income. The applicant did not make any direct contribution to the acquisition of the property.

The applicant and Respondent agreed on the way the plot was acquired, agree that it was by a lottery. It is not contested that it is the Respondent who participated in the balloting. The balloting was not joint but individual. The plot is in the name of the Respondent. He contends that he developed the same alone. On this plot I find that it was acquired during the subsistence of the marriage. In 1982 or 1987. The Respondent balloted for it. There was no input of the applicant in the balloting process and therefore the acquisition WAS by respondent.

The Plot is developed with 7 single rooms. The applicant has not tendered any evidence of direct monetary contribution to the development of the 7 single rooms. In absence of that evidence, I find that applicant did not contribute to the acquisition which was by ballot, or development of the same. I therefore find this property to be held by the Respondent absolutely at 100%.

2. Nairobi Block 117/470 – Kamiti Farms

The property is registered in the name of the Respondent. The same was bought in 1986. The Respondent testified that he bought it for Ksh.30,000/-. The applicant testified that she borrowed Ksh.13,000 to build the house and a further Ksh.10,000/- for an extension. Presently on the property there are apartments being built. The Respondent testified that it is him who bought the land at a purchase price of Ksh.30,000 from a loan secured from his Sacco. He testified that he developed the plot with 4 semi-permanent rooms between 1986 - 1988. This became their matrimonial home. He demolished the semi-permanent rooms and is now building 22 permanent rooms. The applicant is not involved in the construction of the Permanent rooms. Her claim is that she contributed to the purchase of the a land and extension



of the temporary rooms. Both parties confirm that they stayed together on this plot as their matrimonial home.

From the evidence I am persuaded that the applicant did make contribution to the purchase of the plot. New developments by Respondent have been undertaken by the Respondent on the plot without the financial contribution of the applicant for which she will not be entitled to a share. I find that her share would be in the purchase of the plot. I therefore direct that the value of the empty plot be ascertained and the same be apportioned at 50% to applicant and 50% to the Respondent. For clarity the value will be for the plot without developments. The Respondent will be at liberty to refund the applicant the 50% of her share on the land without developments and retain the property.

3. Naro Moru

The Property belonged to the father of the Respondent. It was inherited by the Respondent and it is ancestral land. Applicant confirmed that Respondent had built a house on the plot land before she was married. From the evidence clearly this is ancestral land which is not subject to matrimonial division in matrimonial cause unless the applicant tenders evidence of development done on it by the applicant which I do not find in this case. I therefore find that this is not a matrimonial property for distribution.

4. Kahawa rest stall.

This is a property bought from the City County for which the Respondent pays rent. I now find that it is matrimonial property as it is a lease from City County by Respondent. Same is not available for distribution.

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

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**S. N. RIECHI**

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**JUDGE**

