



ENK v IKM (Civil Suit E002 of 2020) [2023] KEHC 1567 (KLR) (2 March 2023) (Judgment)

Neutral citation: [2023] KEHC 1567 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITUI
CIVIL SUIT E002 OF 2020
RK LIMO, J
MARCH 2, 2023**

BETWEEN

ENK PLAINTIFF

AND

IKM DEFENDANT

JUDGMENT

1. This is a Matrimonial Cause lodged by ENK, the Plaintiff and the ex-wife of IKM sued here as a Respondent over division of matrimonial properties after the two divorced vide Mwingi Principal Magistrate’s Court Divorce Cause No 7 of 2018.
2. By Amended Originating Summons brought under Section 17 of the Matrimonial Properties Act, 2013 and Order 37 Rule 1 and 2 of the Civil Procedure Rules Cap 21 of the Laws of Kenya, the applicant seeks determination of the following questions;
 - i. Whether the properties listed in the scheduled acquired during the marriage between the parties are matrimonial properties.
 - ii. Whether the plaintiff is entitled to a share in the properties
 - iii. What share in the properties the plaintiff is entitled to?
 - iv. Whether the properties should be subdivided between the parties or in the alternative, the properties should be valued and the Defendant ordered to deliver to the Plaintiff the value of her share in the properties.

The Plaintiff’s Case

3. In her Supporting Affidavit sworn on June 17, 2021 and a further Affidavit sworn on April 1, 2021, the Plaintiff avers that the properties in issue were acquired by joint efforts of the Plaintiff and Defendant during the pendency of their marriage as such the same should be subdivided between them or in the



alternative, the properties should be valued and the Defendant ordered to deliver to the Plaintiff the value of her share in the properties. The Applicant avers that after their marriage, the two resided in Kitui Town for a while before they relocated to Mwingi following the Defendant's transfer to that town. She stated that she was working as a civil servant in the Ministry of Land while the Defendant worked in the Ministry of [Particulars Withheld].

4. She testified that the two did not have a permanent home at the time of their marriage and only built one between the 1987 and 1988 at the Defendant's father's compound. She stated that, that house was however later sold by the Defendant to his nephew. According to the Applicant the two acquired the following properties during the subsistence of their marriage Mwingi/Mwingi/1XX8,
5. Kiirua/Ruiri/4XX3, Kiirua/Ruiri/4XX4, Kiirua/Ruiri/3XX9, Abothuguchi/Katheri/2XX2 and Abothuguchi/Katheri/2XX0.
6. According to her, the two built their home on Kiirua/Ruiri/3XX9 and lived before they divorced. In regard to Mwingi/Mwingi/1XX8, the Plaintiff avers that the two purchased the property from one Peter Muriungi Ithinji in 1996 and that she secured a loan of Kshs 35,000/- from Ardhi Sacco Co-operative Society and she contributed towards the purchase of the land. That upon purchase of the land, the couple constructed two houses one of which was completed in 1998. She stated that they lived in that house raised their children there and still lives there to date. That the second house on Mwingi/Mwingi/1XX8 was put up for rental income and that the Defendant is the one taking the rent of Kshs 10,000/- from the house since 2013.
7. The Plaintiff also avers that the two planted banana plantations on parcels number Abothuguchi/Katheri/2XX2 and Abothuguchi/Katheri/2XX0 in the course of their marriage but the Defendant is the one has been selling and solely benefiting from the proceeds of the sale. With regards to Kiirua/Ruiri/4XX3, Kiirua/Ruiri/4XX4, the Plaintiff avers that the two parcels although undeveloped were though procured under the Defendant's name, were procured pursuant to the contribution of both of them. She avers that the parcels are only in the Defendant's name because the two agreed on the same during their marriage and further that the decision was largely influenced by the Meru culture which favours the registration of properties under the husband's name.
8. The Plaintiff also avers that she bought Plot No 2XXA Kambi ya Juu Isiolo which she later sold to pay school fees for her children. She also avers that she owns the parcel known as Nyaki/Kithoka/Mwainka/2XX which she inherited from her father BM and that she sold her vehicle registration number KBU 1XXX and secured a loan from Equity Bank for purposes of developing that inherited land.
9. In her further Affidavit sworn on April 1, 2022, the Plaintiff denies the allegation that she did not contribute towards the purchase of Mwingi/Mwingi/1XX8 and construction of their matrimonial home and asserts that she was a salaried worker and that she did in fact contribute Kshs 35,000 after securing a loan from Ardhi Sacco. She stated that she supervised workers during construction and according to her it is unfair that the Defendant is the sole beneficiary of the rent proceeds from the said plot. The plaintiff also denied the allegation that the Defendant contributed towards her business in Mwingi and asserts that she paid Kshs 52,000/- upon her retrenchment and a further Kshs 160,000/- as a gratuity which went towards her business. She also denied claims that it was the Defendant who bought land parcel K/JUU/2XXA at Isiolo she asserted that she bought the said parcel using proceeds from her business and a loan from Equity Bank. She stated that she later sold the parcel in 2015 and used the proceeds to put up a commercial building on the parcel known as Nyaki/Kithoka/Mwainka/2XX which she inherited from her father. She also denied having an affair with CPL M as alleged by the Defendant.



10. In her oral evidence, the Plaintiff stated that she was a business woman living in Mwingi and she adopted her affidavits filed on sworn on June 17, 2021 and April 1, 2022. The evidence tendered is as per what has been highlighted above.
11. She emphasized that she inherited parcel number Nyaki/Kithoka/Mwainka/2XX from her father the same way the Defendant inherited Abothuguchi/Katheri/2XX2 and Abothuguchi/Katheri/2XX0 from his father. She insisted in re-examination that she solely developed the parcel by putting up rental units in 2020 which fetches between Kshs 4000/- and 5,000/- per month. She denied getting the money to put up the rentals from selling land parcel Isiolo K/JUU/2XXA instead, she stated that she secured a loan from Equity Bank and sold her car KBU 1XXX for Kshs 900,000/- which she channeled towards the construction. She also stated that she used the proceeds from the sale of plot in Isiolo to settle her son in Mombasa and also used some in a wedding of one of their children.
12. The Plaintiff also contended that she was a party to the agreement dated January 30, 2009 which was in reference to the sale of parcels number Kiirua/Ruiri/4XX3, Kiirua/Ruiri/4XX4 stating that she contributed Kshs 150,000/- of the total purchase price of Kshs 340,000/-. She however acknowledged that she did not have any documentation to support this claim. It was also her contention that she contributed Kshs 200,000/- towards the purchase of parcel No Kiirua/Ruiri/3XX9 which she claimed to have secured from a loan gotten from Equity bank. She insisted that her bank statements indicate monthly deductions of Kshs 200,000 loan she obtained from Equity Bank though she could not trace the loan application forms in respect to that amount.
13. On her contribution towards construction of their matrimonial home on parcel number Mwingi/Mwingi/1XX8, the Plaintiff asserted that she secured a loan of Kshs 35,000/- from Ardhi Sacco which she gave as contribution towards the construction of the home. She also stated that she contributed about Kshs 180,000/- in total. She also asserted her monetary contribution towards construction of commercial buildings but stated that the Defendant was the only one who was benefiting from rent from the houses.
14. She claimed sole ownership of business in Mwingi known as [Particulars Withheld] Centre, insisting that she started it using her retirement benefits following her retrenchment in 2000. She conceded that the Defendant was the family's sole breadwinner but that only lasted for three months after her retrenchment and that after, she started her business in 2001, She took up her role of providing for her family as well.

She testified that she used retirement benefits of Kshs 200,000 to begin her business which she says flourished, enabling her to contribute towards development of the matrimonial properties. She termed the claims that she had begun a relationship with one GM as false and in bad faith.
15. In her written submissions done through learned Counsel M/s Musyoka Muigai and Co Advocate, the Plaintiff has highlighted four issues upon which her claim for division of matrimonial property is grounded.
 - i. Firstly, she submits that her marriage to the defendant was dissolved and assert that, the fact is uncontested.
 - ii. Secondly, she submits that the matrimonial properties in dispute were acquired during the subsistence of their marriage.
 - iii. Thirdly, she contends that both of them contributed towards the acquisition and development of the listed properties which she claims are matrimonial properties. She contends that she was retrenched in the year 2000 but she was in employment before and even when she was



retrenched, she was given retrenchment benefits which she used to start business and utilized the proceeds from the business in developing the matrimonial properties. She contends that the defendant has failed to demonstrate that he acquired the assets alone or developed them on his own with her support.

- iv. Fourthly, the Plaintiff submits that the division of the matrimonial properties should be done on the basis of fairness as some properties according to her are too small to be split into two.
16. Towards that end, she proposes that each party should retain what each got/or inherited from their respective parents. She proposes that the defendant does keep Kiirua/Ruiri/3XX9 while she keeps Mwingi/Mwingi/1XX8. She justifies that proposal on the basis that she has been residing in that property in Mwingi with her children since 1998 adding that the portion at Kiirua where the Defendant resides is larger compared to the portion of land in Mwingi.

She however proposes that Kiirua/Ruiri/4XX3 and Kiirua/Ruiri/4XX4 should be shared with each of them taking one parcel.
 17. Defendant's Case

On his part the Defendant, filed two witness statement dated February 11, 2021 and a further witness statement dated September 20, 2021 in which he asserted that the Plaintiff did not contribute in any way to the acquisition of Mwingi/Mwingi/1XX8, Kiirua/Ruiri/4XX3, Kiirua/Ruiri/4XX4 or the development on Mwingi/Mwingi/1XX8. He stated that he bought Mwingi/Mwingi/1XX8 from one Peter Muriungi Ithini at a consideration of Kshs 80,000/- and exhibited an agreement dated 21st November 1995 to that effect. He asserts that he was able to raise the purchase price from savings from his earnings and investments. He in particular contends that he had invested in shares and liquidated some to get money to buy the assets that are now in dispute.
 18. The Defendant also refutes the claim that the Plaintiff financed the business at Mwingi and stated that she was retrenched from employment in October 2000 insisting that she was paid Kshs 52,500/- only as benefits. He claims that he started the business and invested Kshs 100,000/- but conceded that the Plaintiff is the one running the business.
 19. He also stated that he bought number Kiirua/Ruiri/4XX3 and Kiirua/Ruiri/4XX4 from Patrick Mugambi at Kshs 340,000/- which he says he paid for without any support from the Plaintiff. He confirmed that the two parcels were undeveloped.
 20. In relation to parcel number K/JUU/2XXA at Isiolo town, the Defendant contends that the Plaintiff purchased it using proceeds from the family business. He also claims that she sold the property while the two were undergoing their divorce proceedings. He alleges that the Plaintiff used the proceeds from the same to put up a house and commercial buildings on parcel number Nyaki/Kithoka/Mwainka/2XX which he acknowledged was inherited from her father's estate.
 21. The Defendant also states that he constructed a rental unit on plot number Mwingi/Mwingi/1XX8 without the Plaintiff's support. He also denies the claim by the Plaintiff that she paid school fees for their children and further denies that he sold their matrimonial home in Meru. He explained that he was the one who paid school fees for their children and that the matrimonial home was given to his nephew as it was built on a portion which was given to the nephew by the Defendant's father. He also admitted to issuing an eviction notice to the Plaintiff to vacate the house on Mwingi/Mwingi/1XX8 stating that the same was informed by the fact that she is now married to one GM.
 22. In his further witness statement, the Defendant avers that he bought parcel number Kiirua/Ruiri/3XX9 in 2008 while the two were living separate lives and the Plaintiff was living with GM.



- He also asserted that parcels number Abothuguchi/Katheri/2XX2 and Abothuguchi/Katheri/2XX0 were ancestral lands gifted to him by his father and that the parcels were undeveloped save for coffee planted by his father in the 1950s.
23. The Defendant relied on his bundle of documents filed on September 23, 2021 to support his claim.
 24. In his testimony in court, the Defendant told the court that the two married in 1986 but divorced in 2020. He stated that he was opposed to the divorce but none the less the same was allowed. He stated that the properties contained in the schedule provided by the Plaintiff were his. Adding that he was the one who started the family business after the Plaintiff's retrenchment in 2000. He also stated that he was not aware of how the business was doing between 2005 and 2009 as the two lived separately.
 25. He further insisted that he took a loan from Ukulima Sacco to purchase plot number Mwingi/Mwingi/1XX8. He however admitted that he did not have documents showing when the loan was taken or whether and how much from selling his shares. He also explained that he spent around Kshs 500,000/- in construction of their home. He also asserted that he gave the capital of Kshs 100,000/- to the Plaintiff towards the family business in Mwingi. He stated that the money came from a loan from Ukulima Sacco. He also stated that there was tension in their marriage from 2005 and that he moved out of their matrimonial home in 2015 following a transfer at work to Meru. He also explained that he bought parcels number Kiirua/Ruiri/4XX3, Kiirua/Ruiri/4XX4 at Kshs 340,000/- and that he got the purchase price from selling his Kenya Commercial Bank and Barclays Bank shares.
 26. The Defendant called a witness one Solomon Mwinzi who adopted his witness statement dated February 12, 2021 as his evidence in chief. He told this court that he supervised the construction of the Defendant's home at Mwingi adding that it was the Defendant who bought the construction materials and also paid for his services. He claimed that the Plaintiff insulted him at times and complained about noise from the construction site as well as debris in the compound.
 27. The Defendant through written submissions by his learned Counsel M/s Mitheka and Kariuki Advocates, contends that none of the listed assets in the OS meets the definition of "matrimonial property" save for one property namely Mwingi/Mwingi/1XX8. He submits that even then; the Plaintiff is not entitled to a share because there is no evidence in his view justifying her to have a share.
 28. The Defendant agrees with the Plaintiff's on the submission that parcel numbers Abothuguchi/Katheri/2XX2 and Abothuguchi/Katheri/2XX0 and parcel number and parcel number Nyaki/Kithoka/Mwainka/2XX were inherited properties and therefore, does not form part of the matrimonial properties.
 29. On contribution, the Defendant has cited the Court of Appeal decision in *PME vs PNE* (2007) eKLR on the court's finding that beneficial share of a spouse who is not a registered owner of a property is dependent of their contribution. He urges this court to find that Mwingi/Mwingi/1XX8 was procured by himself without any contribution from the Plaintiff. The Defendant submits that the evidence in form of a sale agreement shows that he was the sole owner of that property.
 30. The defendant proposes that the Plaintiff be allowed to keep the family businesses in Mwingi stating that he is ready to let her keep the same.
 31. This court has considered this suit, the facts lending presented and the response made. Both parties in this case though for good measure had documents to support their respective positions, it was evident during trial that largely the claims and counter claims boiled down to the Plaintiff's word as against that of the Defendant.



32. The applicant's suit is premised largely on division of what she considers to be matrimonial property. Her case is that she was married to the Respondent and that the two acquired property together but their marriage having broken down and dissolved, the matrimonial property should be shared between her and the defendant.
33. Division of matrimonial property is provided for under section 7 of the *Matrimonial Property Act* which provides; 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.
34. Article 45(3) of the *Constitution* also gives each spouse in a marriage their respective rights. It states: -
- “Parties to a marriage are entitled to equal rights at the time of the marriage, during the marriage and at the dissolution of the marriage.”
35. One of the contested issues in this matter is which assets or properties constitute matrimonial property. So the 1st issue for determination is what is matrimonial property?
36. The *Matrimonial Property Act* under Section 6 further provides that Matrimonial Property includes;
- a. The matrimonial home or homes
 - b. household goods and effects in the matrimonial home or houses or
 - c. any other immovable and movable property jointly owned and acquired during the subsistence of the marriage
37. Under Section 2 of the *Act*, ‘Matrimonial home’ has been defined 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.”
38. As observed above, the parties in this suit are in disagreement about what properties are matrimonial properties. In the plaintiff's view the following properties form matrimonial property and therefore she feels that she is entitled to a share;
- i. Mwingi/Mwingi/1XX8
 - ii. Kiirua/Ruiri/4XX3
 - iii. Kiirua/Ruiri/4XX4
 - iv. Kiirua/Ruiri/3XX9,
 - v. Abothuguchi/Katheri/2XX2
 - vi. Abothuguchi/Katheri/2XX0
39. The Defendant assert that only one asset namely family businesses at Mwingi is matrimonial property. The rest listed by the Plaintiff in his view do not meet the criteria set by law.
40. In view of the fact that various properties or assets are contested, this court will consider each and every asset before I delve on the question of division.
- 41.



(i) Mwingi/Mwingi/1XX8

It was the Plaintiff's case that at the time of their marriage, she was working as a civil servant with the Ministry of Lands during which time she procured a loan from Ardhi Sacco of Kshs 35,000/- which she gave to the Defendant as a contribution towards the purchase of the said property. She stated that the two constructed two houses on the parcel one of which was their matrimonial home which she has lived in since 1998 and still does together with her children. It was also her case that the Defendant has been collecting rent from the other house on the suit property without sharing the same with her.

42. On his part, the Defendant admitted to the fact that the property was acquired when the two were married and living together. He however disputed the claim that the Plaintiff contributed to the purchase of the property or development of the same. The Defendant also exhibited a Sale Agreement dated November 21, 1995 in relation to that suit property. The Defendant alleged that the Plaintiff's claim that she took a loan remained unproved. According to his evidence in court, he testified to the effect that the Plaintiff only catered for the family's upkeep in terms of buying food for the family. If at all the court was to accept this argument, the documents exhibited by the Defendant in relation to how he acquired money to purchase of this specific parcel do not show the value of shares allegedly sold. It only shows the number of shares. He also testified to the effect that he could not remember how much he earned at the time which means that his contention that he solely contributed towards the requisition and development of Mwingi/Mwingi/1XX8 is not proved to the required standard.
43. This court finds that in respect of the above property none of the parties was able to prove that the acquisition or development was out of sole contribution because it is apparent that the property was acquired and developed during the subsistence of marriage and evidence tendered shows that each partner was employed at the time with both of them earning salaries because both were civil servants.
44. I have seen the evidence of employment tendered by the Plaintiff indicating she was employed on April 10, 1991 and the letter confirming her promotion dated August 24, 1990. I have also seen the pay slip indicating that she was saving some money in her Sacco money namely Ardhi Sacco. Her claim that she took a loan from the said Sacco towards part acquisition and part development of Mwingi/Mwingi/1XX8 is well grounded.
45. I have considered the evidence tendered by the defendant. He says he was earning between Kshs. 1,500 and Kshs 1,800 per month but stated that he used to earn some allowances of about Kshs 450 and more during travels and field duty allowances. He was unable to demonstrate how much he earned in allowances. He did not tender any tangible evidence in terms of pay slip or bank statement to proof his claim that he earned more than his ex-wife. In his evidence he appeared to suggest that what his ex-wife was earning was too little as compared to him but the evidence tendered by the wife at least on the basis of pay slip shows that she earned a net salary of between Kshs 5,262 and Kshs 7,556 which was more than what her ex-husband claimed he earned.
46. There is of course lack of clarity on how both parties raised Kshs 80,000 which was the total consideration for Mwingi/Mwingi/1XX8 but there I have no hesitation in finding that both spouses contributed towards the acquisition of that property and development. The Plaintiff in her demeanor struck this court as a credible witness she was firm in her answers and unshaken even under cross examination. She did not appear to me like she is out to reap where she did not sow. That is of course not to say that the defendant never contributed as well because he did so going by the evidence.
47. I have looked at a letter dated December 14, 2000 from Pension's Department tendered by the Plaintiff indicating that she was paid Kshs 160,000 in the year 2000 being her retirement benefits. Her claim that she contributed towards development of Mwingi/Mwingi/1XX8 is therefore well grounded.



In view of the same, this court finds that the asset is matrimonial property and each spouse equally contributed towards its acquisition and development notwithstanding the fact that the sale agreement in respect to that of asset only reflects the name of the defendant as the purchaser. The evidence by defendant's witness who was the contractor in the construction of the houses in that property was skewed and lacked credibility. He obviously went to court to throw his weight on defendant's case but the evidence tendered lacked the necessary weight.

48.

II) Kiirua/Ruiri/4XX3 & 46XX

The Plaintiff in respect to the above properties claims that she contributed Kshs. 150,000 towards the purchase of the cited properties above. She claims that she was a party to the agreement towards the purchase of the 2 properties but the agreement dated 30th January, 2009 tendered by the Defendant in the list of documents does not support the Plaintiff's claim that she was a witness in the said agreement. She was not. I have also not seen any evidence to support any monetary contributions made by her towards the purchase of the said properties.

The Defendant's claim that the purchase of the said properties was out of his sole contribution has not been rebutted with any evidence to the contrary by the Plaintiff. This Court in the premises, finds that Kiirua/Ruiri/4XX3 & 4684 cannot be termed as matrimonial property in Law.

49. In the case of *TMV vs FMC* (2018) eKLR, the court opined that;

“for property to qualify as matrimonial property, it ought to have been acquired during the subsistence of the marriage between the parties unless otherwise agreed between them that such property would not form part of matrimonial property.”

50.

(III) Kiirua/Ruiri/3XX9

The parties in this suit both agree on the fact that the above property is where the Defendant resides and the Plaintiff claims that, that is where their other matrimonial house is situated.

51. The Plaintiff claims that she contributed Kshs 200,000 towards the purchase of the property and has relied on her bank statement from Equity Bank indicating deductions in respect of a loan she took towards the purchase of the property. The Defendant says that he sold his shares from various companies to raise Kshs 700,000 the purchase price of the property. However, the evidence tendered in my view was insufficient to support the Defendant's claim because he was unable to prove that the total proceeds from the shares sold was Kshs 700,000 or anything near that. Furthermore, there was no agreement tendered showing how the consideration was paid. It was not very clear either from the Plaintiff or the Defendant as to who between the Plaintiff and Defendant contributed what or how much. It was basically the Plaintiff's word against the Defendant and in such instances, since the property was purchased during the substance of marriage, the presumption is that, both parties contributed with the Defendant contributing more because the Plaintiff said she contributed Kshs 200,000. That property therefore, forms part of the matrimonial properties. I will shortly determine the question and proportion of division.

52.

(IV) Nyali.Kithoka/Mwainka/2XX

Both parties are in agreement that the Plaintiff inherited the above property from her father and does not form part of the matrimonial property.



53.

(V) Abothuguchi/Katheri/2XX0 & 22XX

It is also not in dispute that the above properties were inherited by the Defendant from his father. The 2 assets therefore, in the same way cannot form part of the matrimonial property.

54. In sum, this court finds that based on the evidence tendered, only 2 properties can be termed as matrimonial properties. The same are:-

- a. Mwingi/Mwingi/1XX8
- b. Kiirua/Ruiru/3XX9

55. Division of matrimonial property is provided for under section 7 of the Matrimonial Property Act which provides; 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.”

56. Article 45(3) of the Constitution also provides for the rights of parties to a marriage;

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

57. The division of matrimonial property depends on contribution of each spouse.

58. In the case of ENN vs SNK [2021] eKLR the Court held that a matter regarding division of matrimonial property ought/shall have the following facets proved by either party;

- i. The fact of a valid, legal, regular marriage in law
- ii. Dissolution of such marriage by/through an order of the Court
- iii. That earmarked/listed property constitutes matrimonial property; acquired and developed during subsistence of the marriage
- iv. Contribution by each party to the acquisition/development

59. Section 2 of the Matrimonial Property Act 2013 defines contribution to mean monetary and non-monetary contribution. Non-monetary contribution includes;

- i. Domestic work and management of the matrimonial home.
- ii. Child care.
- iii. Companionship.
- iv. Management of family business.
- v. Farm work.

60. The first two facets of the requirements are not in contention. Both parties agree that they got married and solemnized their marriage on September 6, 1986 and they were blessed with 3 issues. Their marriage was then dissolved on January 29, 2020 *vide* Mwingi PMC DC No 7 of 2018.



61. The question of subdivision of matrimonial properties has been a subject well settled in various courts. The Court of Appeal in *TKM v SMW* [2020] eKLR stated as follows;

“We bear in mind the edict in *Muthembwa v Muthembwa* (2002) 1 EA 186, and many other decisions reminding the courts that in assessing the contribution of spouses in acquisition of matrimonial property, each case must be dealt with on the basis of its peculiar facts and circumstances but bearing in mind the principle of fairness.”

62. Similarly, on contribution, Nyakundi J in *MNH vs FHM* [2018] eKLR held as follows;

“The logical conclusion flowing from the judicial precedence quoted above is that in determining the distribution of matrimonial property at the dissolution of a marriage, the Trial Court ought to dispassionately scrutinize the direct and indirect contribution of each party to the marriage in acquisition and/or development of the suit properties.”

63. This Court has considered the evidence tendered by both parties in this case and as I have observed above it is not easy to tell with accuracy what each spouse contributed in terms of monetary contribution. The Plaintiff says that she did not keep track of each and every contribution she made because she simply trusted the Defendant as her husband and she cannot be faulted on that account.

64. This Court finds that in the circumstances obtaining in this case it is only fair that this divides the 2 matrimonial homes fairly and equitably, given that the Plaintiff resides and has always resided in Mwingi with her children, she should be allowed to keep Mwingi/Mwingi/1XX8 and the business in Mwingi Town which is not in dispute in this cause. At the same time, the Defendant resides in Meru and has been residing there since 2015. He should therefore, be allowed to keep Kiirua/Ruiru/3XX9. In sum, this court finds that both parties/spouses having been in civil services with almost the same job group, they equally contributed towards the acquisition and developments of the 2 matrimonial properties and both should have a fair share. The Plaintiff will have Mwingi/Mwingi/1XX8 and all developments thereon while the Defendant will have Kiirua/Ruiru/3XX9 with all the developments thereon. I will make no order as to costs. So each party to bear own costs.

DATED, SIGNED AND DELIVERED AT KITUI THIS 2ND DAY OF MARCH 2023.

HON. JUSTICE R. K. LIMO

JUDGE

