



**FB v EC (Matrimonial Cause 34 of 2019)
[2023] KEHC 3061 (KLR) (Family) (16 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 3061 (KLR)

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

FAMILY

MATRIMONIAL CAUSE 34 OF 2019

EKO OGOLA, J

MARCH 16, 2023

**IN THE MATTER OF SECTIONS 2,7,9,10,12 AND 17 OF
THE MATRIMONIAL PROPERTIES ACT, NO 49 OF 2014**

AND

**IN THE MATTER OF APPLICATION FOR DIVISION OF
MATRIMONIAL PROPERTY**

BETWEEN

FB PLAINTIFF

AND

EC DEFENDANT

JUDGMENT

1. Before this court for determination is the originating Summons Application dated June 4, 2019 seeking for orders that: -
 - 1) That this honorable court be and is hereby pleased to declare and order that the applicant and the respondent equally share the 4 vehicles owned by the family that's is; one Fiat Cinquecento, one Nissan Murano, one Toyota RA V4 and the Nissan Rogue.
 - 2) That this honorable court be and is hereby pleased to declare and order that the applicant is entitled to full ownership of the house located in the USA, xxxx Sandle Crest Ct, Houston Texas xxxx and all the liabilities that are upon the said house



- 3) That this honorable court be and is hereby pleased to declare and order that the applicant is entitled to full ownership of the house located in France, xxx Clos de la bergerie, xxxx Thoiry and all/any liabilities that are upon the said house
 - 4) That the court does hereby order that an assortment of household items and goods including silverware, furniture, glassware, electrical appliances in both the house in France and the house in Houston be shared equally between the parties herein, with the respondent having first priority to choose whatever she wants from the house in France while the applicant picks the remainder and with the Applicant having first priority to choose whatever he wants in the house in Texas while the Respondent keeps the rest.
 - 5) That the court does order that each party to this application to retain their specific personal belongings, including but not limited to jewelry, clothes, shoes, purses, computers, and other electronic appliances.
 - 6) That he court does order that each party to this application retain their specific personal financial assets in the form of bank deposits, retirement funds.
 - 7) That the costs of this application be in the cause
2. The application is premised upon Section 2,7,9,10,12 and 17 of the *Matrimonial Property Act* No 49 of 2014 and all other enabling provisions of the Law. It is supported by the affidavit of FB sworn on June 4, 2018.
 3. The Applicant is a French man domiciled in Kenya since 2015. He also intends on continuing being a Kenyan resident in the foreseeable future. The Applicant's case is that he got married to EC on the 22nd of March, 1993 in Lima, Peru. They were blessed with two children. The said marriage was dissolved in Family Division Nairobi on December 1, 2017.
 4. The Applicant avers that the house in USA, XXXX Sandle Crest Ct, Houston Texas XXXX was acquired through a mortgage which he has single handedly serviced to date; that he has been paying for property taxes, district taxes and community taxes; that he also paid all utility bills without the help of the respondent.
 5. The Applicant avers that the house in France, XXXX clos de la bergerie, XXXX Thoiry XXXX was acquired through a mortgage which he has single handedly serviced and continues to service to date; that he has paid property taxes and occupation taxes and all the utility bills without any assistance from the respondent.
 6. The applicant states that the Respondent never contributed to the healthcare of the family and other important insurance policies to protect the matrimonial properties.
 7. The Applicant further states that he has and is still solely responsible for the children's school fees, education related expenses and education related responsibilities which include helping the children with their homework and lessons.
 8. According to the Applicant, the respondent did some household chores during the initial stages of their marriage but stopped when they employed domestic workers. Further the respondent did not take care of the children as the respondent's mother, the Applicant's mother or a domestic worker assumed the responsibility of taking care of the children.
 9. The Applicant states that the Respondent is a person of low morals who has been adulterous and on top of that the respondent has been an awful role model to their children.



10. According to the Applicant, the Respondent has no regard for the Kenyan courts as she never responds to any documents served upon her neither does she attend court.
11. The Applicant states that he bought all the vehicles and has been maintaining the vehicles single handedly. He states that he has an assortment of household furniture which include furniture, glassware, electric and electronic goods in Houston and France which he singlehandedly bought with his savings but has no problem sharing them with the respondent on a 50:50 basis.

Response

12. The Respondent was served with the Application but she never entered appearance neither did she respond to the Application.
13. The Applicant filed his submissions dated September 21, 2022. The Applicant raised the following three issues in the Submissions: -
 - a) Whether the court should declare that the Plaintiff is entitled to full ownership of the house in France and the house in Houston Texas
 - b) Whether the court should grant the prayers sought
 - c) Who bears the costs
14. On the first issue he submitted that he is entitled to the full ownership of the two houses in Texas and France as he has been the one servicing the mortgage and taking care of all the bills relating to the houses. The respondent has never made any contribution towards acquisition of the said properties or attendant taxes.
15. The Applicant submitted that the respondent did not make any contribution to the education of the children or to the educational related expenses; that the respondent did not even do simple household chores, neither did she take care of their children. Therefore, the Applicant having not contributed to matrimonial wealth whether materially or non- materially, is not entitled to a share of the same.
16. The Applicant relied on the case of *PWK vs JKG* 2015 eKLR where the court stated that; “where disputed property is not so registered in the joint names of the spouses but is registered in the name of one spouse, the beneficial share of each spouse would ultimately depend on their proven respective proportions of financial contribution either direct or indirect towards the acquisition of the property.”
17. The Applicant submitted that the household items should be shared 50:50 between the Applicant and the Respondent and each party to bear their own costs.

Determination

18. I have carefully examined the Applicant’s pleadings and the submissions as well as the document attached. Before I determine the issues arising in this matter, it is important to first discuss the issue of reciprocal orders so that this court does not make orders in vain.
19. From the Applicants case and all the material provided by the Applicant, it is clear that the matrimonial properties stated herein are outside the Kenyan jurisdiction. The properties are in Texas and others in France. The Applicant has stated that the France Government has approved and confirmed that the Kenya Matrimonial Laws are applicable in France.
20. The law relating to enforcement of judgments made in foreign countries is set out in the *Foreign Judgment (Reciprocal Enforcement) Act*, Chapter 43 of the Laws of Kenya. The objective of the Act is



to make provision for the enforcement in Kenya, of judgments given in other countries which accord reciprocal treatment to judgments given in Kenya and for other purposes in connection therewith. The orders that the Applicant seeks to have registered by this Court were issued by the Supreme Court of India. In order for the said order to be enforceable, it must meet 2 criteria. First, the order must be made by a designated court and second, it must be an order or judgment to which the Act applies.

21. Section 2(1) of the Act defines a designated court as follows:

“designated court” means—

- (a) a superior court of a reciprocating country which is a Commonwealth country;
- (b) a superior court of any other reciprocating country which is specified in an order made under section 13;
- (c) a subordinate court of a reciprocating country which is specified in an order made under section 13;

22. Section 2(1) of the Act further defines a “reciprocating country” as that country declared as such, for the purposes of this Act by the Minister under section 13(1). The superior Court giving the judgment must be of a reciprocating country, as declared by the line Minister by an order, to be a reciprocating country for the purposes of the Act.

23. The *Foreign Judgments (Reciprocal Enforcement) (Extension of Act) Order, 1984* lists in a schedule, the countries declared by the minister to be reciprocating countries. Paragraph 2 of the Order provides:

“The countries specified in the Schedule are declared to be reciprocating countries for the purposes of the Act and the Act shall apply with respect to judgments given by superior courts of those countries.

Schedule

1. Australia,
2. Malawi,
3. Seychelles,
4. Tanzania,
5. Uganda,
6. Zambia,
7. The United Kingdom,
8. Republic of Rwanda.”

24. In the case of *Jayesh Hasmukh Shah v Navin Haria & another* [2016] eKLR the Court of Appeal dismissed an appeal where the appellant sought to enforce and execute in Kenya a judgment from Ethiopia which like India, is not a reciprocating country under the provisions of the Act. The Court stated:

“There is currently no treaty in place between Kenya and Ethiopia pursuant to which either country’s judgment may be enforced by either country’s courts. It is not in dispute that Ethiopia’s Federal Supreme Court is not a “designated court” within the meaning of



Kenya's Foreign Judgment (Reciprocal Enforcement) Act. The respondent cited the case of *Intalframe Ltd v Mediterranean Shipping Company*, [1986] KLR where this Court expressed that the basic principle upon which neighboring or other states provided for enforcement of foreign judgments is one of reciprocity. It is our considered view that the case of *Intalframe Ltd v Mediterranean Shipping Company*, (supra) and the Foreign Judgment (Reciprocal Enforcement) Act (Cap 43, Laws of Kenya) are not relevant to this appeal as they are applicable only where there is reciprocal arrangement on enforcement of foreign judgments."

24. In the instant case, the matrimonial properties are in the United States of America and France. None of the properties are in Kenya. If we are to make a judgment, it will not be enforceable in any of those countries since they are not part of the reciprocating countries.
25. The Applicant has stated that the France authorities are agreeable to having Kenya make a judgment on the matrimonial properties in France. However, such a communication does not make it part of the law or the treaty. The court therefore cannot make orders relating to the properties in France and the United States of America.
26. Were these properties in Kenya, the court would have made a judgment on them but since they fall in a jurisdiction where a judgment made in Kenya cannot be enforced, this court will not make orders in vain. The Applicant is therefore advised to make applications in the relevant countries.
27. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 16TH DAY OF MARCH 2023.

E.K. OGOLA

JUDGE

Judgment read and delivered online in the presence of:

Mr. Okelo hold brief for Mr. Juma for the Applicant

Ms. Gisiele Court Assistant

