



**AWM v SKM (Matrimonial Case E001 of 2021)  
[2023] KEHC 3931 (KLR) (2 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 3931 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
MATRIMONIAL CASE E001 OF 2021**

**MM KASANGO, J**

**MAY 2, 2023**

**BETWEEN**

**AWM ..... PLAINTIFF**

**AND**

**SKM ..... DEFENDANT**

**JUDGMENT**

1. The plaintiff AWM has brought this action seeking that the Land, plot 87 be declared to be matrimonial property and for a mandatory injunction be issued ordering the defendant, SKM, to vacate the said plot.
2. The hearing proceeded through viva voce evidence. Although the plaintiff in evidence before court alleged the defendant was a friend with whom she resided with at the subject plot this was not supported by her own pleading.
3. Through her originating summons the plaintiff pleaded she resided with the defendant from the year 2008 up to 2014 as husband and wife. She filed an action before the Thika Chief Magistrate’s Court seeking a declaration that she and the defendant were married and for the said marriage be dissolved. That court indeed declared they were married and by a decree absolute dated July 31, 2020 the marriage was dissolved.
4. Further, the plaintiff in her evidence, contrary to her pleadings stated in oral evidence that she solely purchased the subject plot. That she obtained a loan to purchase the said property and that purchase was without any financial contribution of the defendant. In her pleadings, the plaintiff pleaded that she obtained a loan with which she built the house on the subject plot. That she and the defendant resided in that house as husband and wife up-to 2014 when the defendant assaulted her and also chased



her away from that house. It is her prayer in that pleading that the court should order the defendant to vacate from the said house. This is how the plaintiff pleaded:

“That I swear this affidavit in support of my application that the respondent be kicked out of the matrimonial home because even if we both co-own the parcel of land on which the house is built; I solemnly (sic) financed the construction and renovation of the house.

That the respondent made very little contribution towards the purchase of the land on which the parcel (sic) is built.”

5. The defendant in oral evidence and through his pleading stated that in 2014 the plaintiff suffered mental ill health and it was during that time she moved out of their home voluntarily. Further, he stated that he obtained a loan of Kshs 650,000 and together with the plaintiff's contribution of Kshs 300,000 they jointly purchased the plot. He also confirmed that the subject plot is registered in his and the plaintiff's name jointly.

### Analysis

6. Having considered the pleadings and the viva voce evidence of the parties, my finding is that the plaintiff failed to prove her case on a balance of probability. This is because she contradicted herself by partly saying the defendant did not at all contribute towards the purchase of the subject plot and also by stating in affidavit evidence that the defendant contributed little amount towards the purchase. The subject plot is registered in the joint names of the parties. The plaintiff's prayer is for this court to declare that she is the sole owner of the subject property. Section 7 of the Matrimonial Property Acts provides that ownership of matrimonial property vests in the spouses according to the contribution of either spouse towards its acquisition.
7. The Supreme Court by its decision in the case of *JOO -v MBO; Federation Of Women Lawyers (Intended Interested Party); Law Society Of Kenya & 3 Others (Amicus Curiae)* 2021 eKLR upheld the holding in the case of *Echaria v Echaria* (2007) eKLR where the court stated that a spouse does not acquire any beneficial interest in matrimonial property by fact of being married only and that the specific contribution has to be ascertained to entitle a spouse to a specific share of the property.
8. My review of the evidence adduced leads me to find that both the plaintiff and the defendant, who were both in full time employment, contributed to the purchase of the subject plot. Additionally, I do find that they also contributed to the construction of the house which house is presently occupied by the defendant and children of the marriage. It is in view of my holding here above that I find it would be unconscionable to make the order the plaintiff seeks, that is to order the defendant to vacate the subject plot.
9. The plaintiff alleges she is entitled to an order she is the sole owner of the subject plot on the basis that she contributed to construction of the house thereon. The defendant in my view has also shown he contributed to that construction. There being no prayer for sale and division of the sale proceeds, of the subject property amongst the parties and because there is no evidence before court of either party not having contributed to the purchase of the subject plot or the construction of the house thereof I find and hold that this case lacks merit. There is no evidence that the loans obtained by the plaintiff were solely applied to the purchase of the plot or in the construction of the house.

### Disposition

In view of the above finding this case is hereby dismissed with no order as to costs.

**JUDGEMENT DATED, SIGNED AND DELIVERED AT KIAMBU THIS 2<sup>ND</sup> DAY OF MAY, 2023.**



**MARY KASANGO**

**JUDGE**

**Coram**

Mourice/Julia, court assistants

Muiruri Cheserek & Co. Advocates for the plaintiff- present:- Mr. Muiruri

Biage & Co. Advocates for the defendant:- present

Court

Judgment delivered virtually.

**MARY KASANGO**

**JUDGE**

