



**SNM v PKK (Civil Suit E050 of 2022)
[2023] KEHC 19992 (KLR) (Family) (14 June 2023) (Judgment)**

Neutral citation: [2023] KEHC 19992 (KLR)

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

FAMILY

CIVIL SUIT E050 OF 2022

PM NYAUNDI, J

JUNE 14, 2023

IN THE MATTER OF THE MATRIMONIAL PROPERTIES ACT, 2013

BETWEEN

SNM APPLICANT

AND

PKK RESPONDENT

JUDGMENT

1. By originating Summons dated 13th July 2022, filed on 14th July 2022, the Applicant seeks the following orders:
 1. That a declaration does issue that all the underlisted properties which are registered in the name of the Respondent and/ or companies under his control are held in trust for the Applicant.
 - i. The Respondent's share of LR No. 1713/20 in Ruiru
 - ii. Nairobi/ Umoja Block 109/544/69
 - iii. Karen Hardy LR. No. 1160/1201
 - iv. Apartment N13 Ngara CHS
 - v. Plots in Thika Town 4953/2354, 4953/2575, 4953/2572
 - vi. Land in Nanyuki LR 6324/11
 - vii. Land in Ruaka Town
 - viii. House in Maua Town, Rwongone



- ix. Land in Igembe Central
 - x. Plot in Nanyuki Town
 - xi. Laikipia Daiga Ethi Block 2/335
 - xii. Laikipia Daiga/ Umande Block 4/ Nyariginu/176
 - xiii. Laikipia/ Nanyuki West timau Block 2/35 & 2/36
 - xiv. Apartment in Washington DC 1836 Metzertott Road, Unit 1507 Hyattsville MD 201783
 - xv. Assorted Plots in Maua Town
 - xvi. Land in Rumuruti
 - xvii. Toyota Prado KCN xxxx
 - xviii. Toyota Prado KCN xxxx
 - xix. Toyota Crown KCN xxxx
2. That an order do issue declaring 50% or such other higher proportion of the properties aforesaid is held by the respondent in trust and/ or for the beneficial interest of the Applicant.
 3. That an order do issue declaring that 50% or such other or higher portion of the shares held by the Respondent his representatives, servants or agents in the following companies are held in trust and for the beneficial interest of the Applicant.
 - i. Family Companies
 - Bulken Brands Limited
 - * ATC NLETS
 - * Nairobi Commodities Exchange Ltd.
 - * Nacex Agriculture Limited
 - * Brazaet
 - ii. Unlisted companiesBraken Agriculture Limited
 - iii. Shares Held under the following CDSC Accounts.Africa Trade Consultants LLCPeter Kirimi KaberiaSerah Nduta Macharia
 4. That this Honourable court be pleased to order that the properties and the income aforesaid be settled in the proportions aforesaid or as the court may order.
 5. That the Deputy Registrar be empowered to sign any documents that the Respondent may refuse to sign to give effect to any Orders that the court may issue.
 6. That the costs of the Summons be provided for.
2. The Application is supported by the Supporting Affidavit of the Applicant sworn on even date. Alongside the pleadings the Applicant filed Bundle of documents dated 14th March 2023.
 3. Notwithstanding service, the Respondent did not enter appearance or otherwise defend the suit. The matter proceeded by way of viva voce evidence on 15th March 2023.



4. At the close of the hearing the Applicant filed submissions dated 27th April 2023.

Summary Of Applicant's Case And Submissions

5. The parties formalised their marriage under Kikuyu Customary marriage in 2005 and the same was dissolved vide Divorce Cause No. E634 of 2021 on 30th December 2021. The marriage was blessed with 2 children born in 2005 and 2009.

6. After the Couple got married the Applicant resigned from her job as a graduate trainee with the Kenya Revenue Authority in 2006 to accompany the Respondent to France when he was appointed as Deputy Head of Mission. She accompanied him to the different overseas stations including France and Brazil. In 2016 the couple returned to Kenya and the Respondent served as a Principal Secretary.

7. During the overseas tour of the Respondent, the Applicant was entitled to a spousal allowance of USD 2000 per month which she utilised to run the house and contribute towards purchase of assets.

8. It is the Applicants case that the following properties were acquired during the pendency of the marriage and that she made both financial and non-financial contributions to the acquisition.

9. The Respondent's share of LR No. 1713/20 in Ruiru

The property was registered in the name of the Respondent on 5th April 2012. It measures 1.822 hectares (approx. 4.502 acres). The brother-in law to the Applicant (her sister's husband) has a registered interest having contributed to its purchase and she is claiming 50 percent of the balance of 3.5 acres. She helped secure financing through Cooperative bank for the purchase of the land.

10. At the time of the purchase of this parcel, the Couple was residing in Spain, the Respondent was the Head of Chancery in Spain (Deputy Head of Mission). The Applicant was the contact person with the legal team to finalise the transaction. In addition to communicating with the legal team the Applicant was managing the home and taking care of the Children and provided companionship for the Applicant.

11. Managing the household also entailed supporting him in his role as Ambassador by hosting guests for events including national holidays and accompanying him for events he attended as Ambassador.

12. LR NAIROBI/UMOJA/ BLOCK 109/544/699

The property was registered in the name of the Applicant in 2014. At the time the Couple was living in Brazil as the Respondent was the Ambassador.

She supported the respondent in his work along with running and managing the home and taking care of their two children.

13. She served as President of Spouses of Ambassadors thus giving Kenya prominence. During their tenure they hosted the AU @50 celebrations at their residence, together with the Africa Day celebrations.

14. When they returned to the Country in 2016 she was actively involved in the development of the property and upon conclusion she has been responsible for managing the properties including dealing with the tenants.

15. LR 1160/ 1201 Karen Hardy

The property is situated in Karen. It was registered in the name of the respondent in 2017. It was acquired through the Civil Servants Housing Scheme. This property was purchased and developed as the matrimonial home. The Applicant signed the mortgage forms as spouse. Her contribution was



non-financial as she was taking care of the home, the children of the union and her father-in-law who was ill and was residing with them. He resided with the couple from 2013 to 2020 when they separated. The father-in-law joined them in Brazil. Caring for her father-in-law included, accompanying him to the clinic and managing his diet.

16. At the time of the purchase the property was developed and they had planned to develop a modern home, a project she was to supervise. The couple separated before they moved in. The Respondent is servicing the loan for the property.

17. Plots in Thika Town, LR No. 4953/2534, LR 4953/2572, LR No. 4953/2575.

Two of these plots (4953/2534 and 4953/2572) are registered in the name of the Respondent and LR No. 4953/2575 is registered in the name of the Applicant. All titles were registered in 2009. The properties were acquired while the couple was in Spain. Her contribution was non-financial as she was managing the home and performing the duties of diplomat's spouse.

18. ¼ acre plot allocated under ballot number 2334 by Nyakinyua Investments Limited.

The property is registered in the name of the Applicant and was acquired in August 2008 during the pendency of the marriage.

19. Apartment N13 Ngara CHS

The apartment was purchased through the Civil Servants Housing Scheme. She has been managing the unit since they returned to the country. Her contribution towards the purchase was both financial and non-financial.

20. Land in Laikipia excised from LR No. 6324/11

By sale agreements dated 19th October 2016, 8th May 2017 and 11th February 2019, the respondent bought a total of 22 acres of Land from the beneficial owners of LR No. 6324/11. The land is yet to be transferred to the Respondent as there is a succession matter pending but the Respondent has been granted vacant possession.

The contribution of the Applicant towards the acquisition was both financial and non-financial. Upon payment for the parcels of land the Applicant undertook farming, planting French beans.

21. Her non-financial contribution included managing the home, taking care of the children of the marriage and her father in law. She also provided support to the Respondent in his role as Principal Secretary.

22. The Applicant also relies on the wealth declaration form of the Applicant for the period 1st November 2017 to 31st October 2019 to identify other properties that she submits were acquired during the marriage and constitute part of the matrimonial property. The properties listed include; -

1. ½ acre in Ruaka Town
2. ¼ acre in Thika Town
3. ¼ acre in Think Town
4. 2 acres in Maua Town
5. 8 acres in Igembe Central
6. 4.5 acres in Ruiru Town
7. 1/8 acre in Nanyuki Town



8. 1 acre in Karen
 9. Assorted shares
 10. House in Umoja Nairobi
 11. Apartment in Pangani Nairobi
 12. Apartment in Washington DC
23. She testified that she does not have the title to the properties in Maua, Igembe Central, Ruaka and the Nanyuki Properties. She avers that they were all acquired during the pendency of the marriage.
24. DAIGA/ UMANDE/ BLOCK 4/ NYARIGINU/ 176 and LAIKIPIA/NANYUKI WEST TIMAU BLOCK 2/35 & 36 (MATANYA MARURA).
25. The Applicant has presented communication between Albert Kamunde & Company Advocates in which the Counsel seeks his legal fees for the purchase of the properties by NACEX Limited of the above properties and sale of LAIKIPIA DAIGA ETHI BLOCK 2/335 by the respondent. The letter is dated 11th November 2019. Subsequent email communication of October 14, 2019 shows that the Applicant facilitated the payment of the legal fees. As alluded to in paragraph 30 below the Applicant holds shares in NACEX Limited.
26. 1836 Metzert Road, Unit 1507
- The Applicant has presented email communication between the Respondent and Beth Malakoff, closing the transaction for the purchase of the above property. The email communication is dated February 23, 2011. The unit is registered in the name of the Respondent. Her contribution towards its acquisition was both financial and non- financial. She travelled to Maryland DC to supervise the Repairs.
27. The Applicant avers that she contributed to the family income that was ploughed back to the investments they made through her farming activities and has produced a deposit and payment slip as evidence of the same.
28. The Applicant also prays for a declaration that she is entitled to a share of the following motor vehicles: -
1. KCN 201N
 2. KCN 203N
 3. KCN 202N
29. It is her submission that guided by the registration number of the vehicles the court ought to take judicial notice of the fact that the KCN series of motor vehicles was in 2014 and therefore these vehicles were acquired during the pendency of the marriage.
30. The Applicant also claims entitlement to shares in the following companies: -
1. Nairobi Commodities Exchange Limited
- This Company holds 500 shares in NACEX Agriculture Limited. The CR 12 form was not presented to court.
2. NACEX Agriculture Limited



She has made available CR 12 form for the said Company. The Company was registered as the vehicle through which they undertook their agricultural activities. She is registered as a director. The shares in the Company are held by Patrick Mwenda in trust for the Applicant and the Respondent as they were out of the Country. She has presented before Court email communication dated December 22, 2011 and January 13, 2012 between the Respondent and his advocate giving instructions on the shareholding.

3. Brazaken Brands Limited

The Applicant is registered as the sole Director with 200 shares. She uses the Company to undertake business and the proceeds thereof are ploughed back into the family Kitty. The Company was registered in 2014.

4. Braken Agricultural Limited

The CR 12 form has been availed. The Company was registered in 2012. Ntika Patrick Mwenda holds 2750 shares in trust for the Applicant and the Respondent.

31. The Applicant also claims her interest in shares held under the following CDSC Accounts: -

1. Africa Trade Consultants LLC

i. Peter Kirimi Kaberia

Portfolio statement of stock holdings were availed for Peter Kaberia client code 8918

2. Serah Nduta Macharia

32. The Applicant identifies the following as the issues for determination

A. Whether the properties were acquired during the marriage

B. Whether the Applicant contributed towards the acquisition of, development and maintenance of the suit properties

C. Whether the Applicant is entitled to a 50% share or such higher proportion of the properties

33. In support of the Applicants case the Applicant relies on the following authorities

1. [*MW v AN*](#) [2021] eKLR

2. [*MNK V POM*](#) Petition No. 9 of 2021 (Supreme Court)

3. [*ENK v JNK*](#) [2015] eKLR

4. [*EMN v NM*](#) [2018] eKLR

5. [*F.S. v E.Z*](#) [2016] eKLR

6. [*MNH v FHM*](#) [2018] eKLR

7. [*JWC v PBW*](#) [2015] eKLR

Analysis And Determination

34. Having carefully perused the Pleadings, documents submitted herewith, the submissions and authorities relied upon. I frame the following as the issues for determination.

1. Whether the properties were acquired during the marriage



2. Whether the Applicant contributed towards the acquisition of, development and maintenance of the suit properties
 3. Whether the Applicant is entitled to a 50% share or such higher proportion of the properties
35. Whether the properties were acquired during the marriage

The parties were married in 2005 and the marriage was dissolved in 2021.

I find that the Applicant has established that the following properties were acquired during the pendency of the marriage: -

1. The Respondent's share of LR No. 1713/20 in Ruiru
 2. LR NAIROBI/UMOJA/ BLOCK 109/544/699
 3. LR 1160/ 1201 Karen Hardy
 4. Plots in Thika Town, LR No. 4953/2534, LR 4953/2572, LR No. 4953/2575.
 5. ¼ acre plot allocated under ballot number 2334 by Nyakinyua Investments Limited.
 6. Apartment N13 Ngara CHS
 7. Land in Laikipia excised from LR No. 6324/11
 8. DAIGA/ UMANDE/ BLOCK 4/ NYARIGINU/ 176 and LAIKIPIA/NANYUKI WEST TIMAU BLOCK 2/35 & 36 (MATANYA MARURA)
 9. Apartment in Washington DC 1836 Metzert Road, Unit 1507 Hyattsville MD 201783
 10. Shares in
 - a. NACEX Agriculture Limited
 - b. Brazaken Brands Limited
 - c. Braken Agricultural Limited
 11. Shares in CDSC Accounts
 - a. Peter Kiri Kiri Kaberia
36. I have excluded
1. 8 acres in Igembe as there is no evidence showing its date of acquisition. The evidence of its existence is in the Applicants declaration of wealth, but no evidence to support the claim that it was acquired during the pendency of the marriage
 2. 2 acres in Maua Town for the same reason
 3. Assorted plots in Mauta Town for the same reason
 4. Land in Rumuruti for the same reason
 5. Laikipia Daiga Ethi Block 2/335 as this is a property the Respondent sold.
 6. I have also excluded motor vehicles registration Numbers; KCN 201N, KCN 203N, KCN 202N. Nothing was placed before court to demonstrate ownership, and date of acquisition.



7. CDSC Accounts in Africa Trade Consultants LLC and Serah Nduta Macharia as the statements were not presented to confirm existence.
 8. Nairobi Commodities Exchange Limited as the CR 12 was not availed.
37. Whether the Applicant contributed towards the acquisition of, development and maintenance of the suit properties

It is now well settled that when considering contribution towards acquisition development and maintenance of matrimonial properties Courts will have regard to both financial and non-financial contribution by parties to a marriage. This was well articulated in the decision of *MW Van* [2021] eKLR, where Matheka J held; -

[38].... This other part of mothering, housekeeping and taking care of the family is more often than not given any value when it comes to sharing matrimonial property. It is easy for the spouse working away from home and sending money to lay claim to the whole property purchased and developed with that money by the spouse staying at home and taking care of the children and the family. That spouse will be heard to say that the other one was not employed so they contributed nothing. That can no longer be a tenable argument as it is a fact that stay at home parents and in particular women because of our cultural connotations do much more work (house wives) due to the nature of the job. For instance, society has now placed monetary value to carrying a baby in the womb. This is seen on the unregulated surrogacy agreements that people are getting into. Raising of children is a full time job that families pay a person to do. Cooking and cleaning as well. Hence for a woman in employment who has to balance child bearing and rearing this contribution must be considered. How do we put monetary value to that process where a woman bears the pregnancy, gives birth, and takes care of the babies.

38. Based on the foregoing and the evidence given in Court, it is evident that the Applicant made financial and non-financial contributions towards the acquisition of the property. In assessing her contribution, I consider the fact that she abandoned a promising career to accompany her husband and provide spousal support when he served as a diplomat out of the Country and upon their return she continued to run the home and manage the family economic ventures.
39. The Applicant freed the hands of the Respondent so that he had the opportunity to scale to high heights as evidenced by the fact that he rose to become the Head of Mission in Brazil and later served as Principal Secretary. This must be partly attributable to having a supportive spouse who did the heavy lifting on the home front.
40. The Applicant has demonstrated that she not only played the role of diplomatic spouse effectively but at the same time she doubled up as mother, project manager, nurse aid for her father in law and literally a personal assistant for her husband.
41. Whether the Applicant is entitled to a 50% share or such higher proportion of the properties
In *ENK v JNK* [2015] Musyoka J. stated as follows; -

(25) By dint of Section 14(a) of the *Matrimonial Property Act* and by reason of the said assets having been acquired during matrimony, and especially during cohabitation, the presumption kicks in that the said assets are held in trust by the respondent for the applicant. The presumption as earlier indicated is rebuttable by evidence to the contrary. The presumption having arisen, the



respondent was bound to provide evidence to displace the presumption. The only duty on my part is to determine whether such evidence has been provided that would displace the presumption.

42. As earlier indicated the Respondent did not defend the suit and therefore the Applicants evidence is uncontroverted. I am persuaded that the Applicant has demonstrated that she played the role of supportive spouse, effective homemaker, diligent farmer and all these contributed to the acquisition of the properties and to entitle her to an equal share.
43. Having found that the properties were acquired during the pendency of the marriage and that the contribution of the Applicant is evident, I grant the following specific orders-
44. That a declaration is hereby issued that a 50% proportion of the properties listed below and held by the Respondent is for the beneficial interest of the Applicant
 - i. The Respondent's share of LR No. 1713/20 in Ruiru
 - ii. LR NAIROBI/UMOJA/ BLOCK 109/544/699
 - iii. LR 1160/ 1201 Karen Hardy
 - iv. Plots in Thika Town, LR No. 4953/2534, LR 4953/2572
 - v. Apartment N13 Ngara CHS
 - vi. Land in Laikipia excised from LR No. 6324/11
 - vii. DAIGA/ UMANDE/ BLOCK 4/ NYARIGINU/ 176 and LAIKIPIA/NANYUKI WEST TIMAU BLOCK 2/35 & 36 (MATANYA MARURA)
 - viii. Apartment in Washington DC 1836 Metzert Road, Unit 1507 Hyattsville MD 201783
2. Shares in
 - i. NACEX Agriculture Limited
 - ii. Brazaken Brands Limited
 - iii. Braken Agricultural Limited
3. Shares in CDSC Accounts
 - i. Peter Kiriimi Kaberia
45. A declaration is hereby issued that 50 % proportion of the properties listed below and held by the Applicant is for the beneficial interest for the Respondent
 1. LR No. 4953/2575.
 2. ¼ acre plot allocated under ballot number 2334 by Nyakinyua Investments Limited.
46. That the division to separate the interests in the properties shall be done within 120 days from the date of this judgment. The costs for this to be borne equally between the Applicant and the Respondent
47. The Respondent to transfer the Applicants share in the property to her within 90 days from the date of division.



48. That in default, the Deputy Registrar of the Family Division, Milimani Law Courts is hereby authorised to sign any transfer documents in place of the Respondent or any other person holding any title on behalf of the Respondent to effect all the orders of the Court in favour of the Applicant

49. That each party will bear their own costs

It is so ordered.

SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 14TH DAY OF JUNE, 2023.

P M NYAUNDI

JUDGE

In the presence of:

.....

Advocates for the Applicant

Karani Court Assistant

