



**EWV v EKN (Matrimonial Cause 1 of 2021)  
[2023] KEHC 19852 (KLR) (7 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 19852 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
MATRIMONIAL CAUSE 1 OF 2021**

**A MSHILA, J**

**JULY 7, 2023**

**BETWEEN**

**EWV ..... APPLICANT**

**AND**

**EKN ..... RESPONDENT**

**JUDGMENT**

**Background**

1. Before court is an application by way of Originating Summons dated 30<sup>th</sup> November, 2021 and brought under Section 3A of the *Civil Procedure Act* and Order 37 Rule 11 of the *Civil Procedure Rules* 2010, 93 of the *Land Registration Act*. No. 3 of 2012, Sections 2,6,7,12,14,17 of the *Matrimonial Property Act*, 2013 and all other enabling provisions of the law.
2. The Application seeks for an order declaring that the Applicant is entitled to the whole of the property known as Title Number Ruiru Kiu Block x/6043 measuring approximately 0.0420 Hectares solely acquired by the Applicant during the subsistence of the marriage but registered in the joint names of the parties.
3. The application is premised on the grounds that the parties are divorced due to the Respondent's infidelity and cruelty. That the suit property was acquired by the Applicant during the subsistence of the marriage but was registered in the joint names of the parties herein. That the Respondent has since taken sole possession of the property where he has invited strangers without the Applicant's consent.
4. The application is supported by the affidavit of EWV sworn on 30<sup>th</sup> November, 2021. She deposed that she was married to the Respondent in the year 2012 but they have since divorced. That in the course of her employment as a principal accountant at the [Particulars withheld], she acquired a loan of Kshs. 1,400,000/= which together with her savings she acquired the suit property. She attached the Sale Agreement and bank statement. She deposed that the property was however registered in both her



name and that of the Respondent and that in 2014 they constructed a three-bedroom house where she was the financier and the Respondent was involved with the supervision of the construction. That in 2017 the Respondent lost his job and she was the one in charge of taking care of the household. That in 2018 she learnt that the Respondent was adulterous and was also violent as such she moved out in 2020 when she could no longer tolerate the cruel treatment. That she instituted a children's case where the Respondent was ordered to take up parental responsibility by providing a medical cover and school fees which he refused to do as such she meets all the household needs. The court was urged to grant the orders as prayed so that the Applicant does not lose the suit property which she solely acquired.

5. The Respondent was properly served as evidenced by the affidavits of service sworn by Euniter Wairimu on 2<sup>nd</sup> March, 2022 and Jane Kemunto on 1<sup>st</sup> March, 2023 but he chose not to respond and/or participate in the hearing of the suit.
6. On 13/03/2023 the matter came up for hearing. EWW (PW1) testified that she works at [Particulars withheld] as the Chief Finance Manager. That the Respondent was her husband but they divorced on 30/09/2021 and a decree absolute issued. She stated that during the marriage she acquired the suit property where she built a three-bedroom house. That she left the property leaving behind the Respondent and she subsequently filed this cause. She testified that the Respondent also left the property in January, 2023 and that she now resides in the suit property together with her two children. She contended that she solely acquired the matrimonial property though the same is registered in the names of both parties. That on 20/12/2023 she sought a loan of Kshs. 1,400,000/= from National Bank where she added her savings to buy the suit property at Kshs. 1,750,000/=. She contended that she used her earnings to construct their house and that the Respondent's role was to supervise as he did not have regular income. Further, she stated that she moved out from the home on 12/10/2020 together with her children and nanny. Thereafter she filed a children's cause where both parties were granted custody as well as parental responsibility but the Respondent contributed partially. She testified that the Respondent left with all the household goods and she had to buy new household items. Lastly, she prayed for the court to grant her the property solely as the Respondent was not interested in it as he had failed to enter appearance or defend the instant case.
7. The Applicant was directed to file written submissions; hereunder is a summary of the submissions

### **Applicant's Submissions**

8. The Applicant submits that she has proven her direct and indirect contribution towards the acquisition of the property. Reliance was placed in the case of *Federation of Women Lawyers Kenya (FIDA) vs Attorney General & another* (2018) eKLR where it was provided that a party walks out with his or her entitlement based on his or her contribution to entrench the principle of equality in marriage. The Respondent failed to respond but opted to carry all the household goods which were subject to division. Reliance was placed in the case of *AWN vs FMN* (2018) eKLR where it was stated that a court cannot be left to speculate on one's contribution. Direct evidence must be tendered in support of such contribution. The court was urged to hold that the Applicant is entitled to the whole of the suit property.

### **Issues For Determination**

9. Having considered the Applicants' Originating Summons, the supporting affidavit and the written submissions. The only issue framed for determination is whether the Applicant is entitled to the whole of the suit property known as Ruiru Kiu Block 2/6043.



## Analysis

10. The parties herein got married on 15/11/2012 where they were blessed with two issues. However, the marriage was dissolved in 2021 vide a Divorce Cause no. E050 of 2021 –Ruiru. The Applicant contended that in the course of her employment she acquired a loan of Kshs. 1,400,000/= in 2013 which together with her savings she acquired the suit property which was registered in both her name and that of the Respondent and that in 2014 they constructed a three-bedroom house where she was the financier and the Respondent was involved with the supervision of the construction. The Applicant contends that in 2017 the Respondent lost his job and she was the one in charge of taking care of the household. However, due to the Respondent’s infidelity and violence she moved out of the matrimonial home in 2020. The Applicant instituted a children’s case where the Respondent was ordered to take up parental responsibility by providing a medical cover and school fees which he refused/neglected and or failed to do as such she met all the household needs.
11. The Applicant’s main contention was that she acquired the suit property solely despite the same being registered in both their names and that there after she constructed a three-bedroom house whereby the Respondent only supervised the construction.
12. She contended that the Respondent was on and off employment and occasionally offered financial assistance as such she was the one responsible of taking care of all the financial needs of the family including but not limited to a medical cover as provided by her employer.
13. For the above mentioned reasons she urged the court to declare that she solely acquired the suit property.
14. Section 6 of the *Matrimonial Property Act* is the applicable law whereby it 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.
15. From the evidence on record the suit property was bought in 2013 during the subsistence of the marriage and the same was registered in both the names of the parties herein. Thereafter, in 2014, the Applicant built a three-bedroom house and the Respondent is said to have only supervised the construction. This court is satisfied therefore, that the suit property in this matter falls within the meaning of matrimonial property as set out in Section 6 of the *Matrimonial Property Act*.
16. With regard to contribution, Section 7 of the *Matrimonial Property Act* is clear in its terms 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.”
17. Contribution towards the acquisition of matrimonial property is defined under Section 2 of the *Matrimonial Property Act*, 2013 in the following terms;-

In this Act, unless the context otherwise requires—

“contribution” means monetary and non-monetary contribution and includes—



- a) domestic work and management of the matrimonial home;
  - (b) child care;
  - (c) companionship;
  - (d) management of family business or property; and
  - (e) farm work.
18. The Applicant herein claims to have solely acquired the suit property during the course of her employment at Kenya School of Government where she worked as a Finance Manager. She testified to having obtained a loan of Kshs. 1,400,000/= from National Bank. She attached a bank statement evidencing the transfer of funds from her account to the seller. She also attached a sale agreement to that effect. Further she attached school fees receipts to show that she pays school fees for the children. Also she produced medical insurance cards for the family as provided by the employer as well as a lease agreement as evidence that she was renting a house where she was residing with her children after leaving the matrimonial home due to the Respondent's acts of infidelity and cruelty.
19. On the other hand, the Respondent despite having been duly served with Summons did not enter appearance nor was he in attendance as such the evidence adduced was unchallenged and the application unopposed.
20. In the circumstances, therefore, and bearing in mind the evidence on record, this court is satisfied that the Respondent did not make any notable monetary contribution towards the purchase of their matrimonial home and the same was solely purchased by the applicant.

### **Findings and Determination.**

21. For the forgoing reasons this court makes the following findings and determinations;
- i. This court finds the Originating Summons to have merit and the application be and is hereby allowed.
  - ii. A declaration be and is hereby issued that the Applicant is entitled to the whole of the property known as Title number Ruiru Kiu Block 2/6043 measuring approximately 0.0420 Hectares.
  - iii. The Respondent be and is hereby ordered to transfer his share in the property known as Title number Ruiru Kiu Block 2/6043 to the Applicant within Ninety (90) days from the date hereof.
  - iv. In default the Deputy Registrar Kiambu High Court is hereby authorized to sign and transfer documents in place of the Respondent to effect transfer of the subject property in favour of the Applicant and the property be registered in the sole name of the Applicant.
  - v. This being a family matter there shall be no order as to costs.

Orders Accordingly.

**DATED SIGNED AND DELIVERED ELECTRONICALLY AT KIAMBU THIS 7<sup>TH</sup> DAY OF JULY, 2023**

**A.MSHILA**

**JUDGE**

**In the presence of;**



Miss Kemunto h/b for Muhanda – for the Applicant

N/A – by the Respondent

