



**RWM v JMN (Civil Case 14 of 2019) [2024] KEHC 12411 (KLR)
(Family) (17 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 12411 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
CIVIL CASE 14 OF 2019
HK CHEMITEI, J
OCTOBER 17, 2024
(FORMERLY CIVIL CASE NO 1383 OF 1996(OS))**

BETWEEN

RWM APPLICANT

AND

JMN RESPONDENT

JUDGMENT

1. The Applicant and the Respondent’s marriage which was solemnized on 5th May 1979 was dissolved on 25th January 1996 after a successful application by the Applicant. Their said marriage was blessed with three children who are all adults.
2. The Applicant filed this cause seeking orders that the following properties be declared matrimonial, namely:-
 - (a) Magutu/Ragati/xxx in Nyeri county
 - (b) Mwerua/Kianda/xxx Kirinyaga county
 - (c) Gaturi/Githimu /xxxx Embu county
 - (d) Gaturi/Githimu/xxxx Embu county
 - (e) Gaturi/Githimu/xxxx Embu county.
3. When the matter came up for directions the court ordered that the same be heard by way of oral evidence. Both the Applicant and the Respondents testified and they did not call any witnesses. They thereafter filed written submissions which the court has perused extensively.



4. It is worth however at this juncture to summarize the evidence as presented by the parties.
5. It was the Applicant's case that all the above cited properties were purchased or acquired during the subsistence of their marriage and that she contributed both monetarily and non-monetary. That she provided companionship to the Respondent as well as taking care of the three children.
6. She said that she was a nurse and earned a salary and part of it went towards the payment of the children's school fees, clothing's and paying utilities like water and electricity.
7. She produced some of the receipts to show that she paid for the utilities and the children's school fees. She said that at that time the nurses were highly regarded and she worked in Embu hospital and other medical facilities and she earned a good salary.
8. She testified that she contributed Kshs 12,000 towards the purchase and development of land parcel number Mwerua/Kianda/xxx in Kirinyaga. That her gratuity of Kshs 17,000 from Afya Sacco went towards the purchase of Gaturi/Githimu/xxxx in Embu.
9. As regards Magutu/Ragati/xxx the same was sourced by her mother in law and she contributed Kshs 9000 towards its purchase.
10. As regard's Gaturi/Githimu/xxxx in Embu the same according to her was acquired in 1987 at a cost of Kshs 45,000 and it is currently developed and the Respondent has exclusive use.
11. Gaturi/Githimu/xxxx was acquired in 1992 through the general income from the above other properties.
12. It was her case therefore that she had produced cogent evidence to demonstrate that she heavily contributed to the purchase of the above matrimonial properties.
13. On his part the Respondent testified and agreed with the listing of the above assets. He however contented that he was a retired Civil Servant having worked as an Auditor. That his marriage with the Applicant was never rosy and that is why she ended up filing for divorce.
14. It was his case that he single handedly purchased the properties and that the Applicant went away for 26 years and during that period he took care of the properties including their development.
15. In terms of acquisition of the properties he said that Gaturi/Githimu/xxxx was purchased by him in 1987 through a loan of Kshs 30,000 and he immediately commenced its development.
16. He used his father's workmen compensation payment on the other hand to purchase land parcel number Mwerua/Kianda/xxx. He said that his father had been paid Kshs.34,023 which he donated to him. There was documentary evidence to that effect.
17. As regards Gaturi/Githimu/xxxx he said that he applied for a loan of Kshs 15,000 and he has further incurred a total of Kshs 82,069 towards its development.
18. He went on to state that he developed land parcel number Gaturi/Githimu/xxxx and exhibited several receipts totaling Kshs 485,258.
19. Land parcel number Magutu/Ragati/xxx was acquired in 1996 and he attached a letter of consent to that effect beside the evidence of its development.
20. It was therefore his case that the Applicant who was a nurse did not make much monetary contribution and thus the claim ought to be dismissed. In particular he accused the Applicant of instigating the divorce proceedings and moving away to Namibia where she came back after 26 years.



Analysis and Determination.

21. The court directed the parties to file written submissions which they complied. The court has perused the same as well as the authorities cited and does not intend to reproduce the same here save to state that each of them pulled in their obvious directions.
22. It was the Applicant's case for instance that since she heavily contributed to the acquisition of the property as well as taking care of the Respondent who was physically challenged, she ought to get half share of the properties. As a nurse she submitted that she contributed from her salary and the Sacco in the said acquisition.
23. The Applicant placed reliance in the case of *MW vs AN* (2021) eKLR and *FS.v. EZ* (2016) eKLR among others.
24. The Respondent on the other hand relied on the Supreme Court of Kenya case of *JOO.v. MBO* petition number 11 of 2020 which espoused the famous Echaria case. In essence there was no automatic provision that in the event of a contest between spouses then the matrimonial property ought to be split in the middle. On the contrary each of the parties ought to establish its position in terms of actual contribution and development.
25. Taking the issues herein, it is not in doubt that the properties herein were acquired basically when their marriage was subsisting except for Magutu/Ragati/xxx which seemed to have been acquired late in 1996.
26. What is not in dispute as well is that the Applicant left for Namibia where she worked as a nurse for 26 years. When she came back it appears she revived this case. Her major contribution in my view seemed to have been love and affection as well as taking care of the children and the entire family.
27. She also produced evidence of some payments of fees as well as some utility bills. They all date back before she left for Namibia.
28. Other than that, it appears from the evidence on board that it was the Respondent who shouldered the burden of physically developing the properties. The evidence of receipts and other documentary evidence speak as much.
29. At the same time the Applicant was unable to explain her contribution for the 26 years she was away. During this period and while she worked as a nurse outside the country, she did not demonstrate in her evidence what she did with her earnings nor how she improved any of the properties. That period in my view was too long to be wished away.
30. Section 2 of the *Matrimonial Property Act* defines contribution as hereunder:-
 - “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;”



31. In this regard, it is true that even though she may not have contributed much evidentially in their development, she contributed to the family in the manner described by the above cited portion of the law.
32. Weighing all the factors as demonstrated in their evidence I do not think that the estate can be divided in the middle as suggested by the Applicant. The 26 years lull in my view speaks volumes. The improvement of the properties was done in that period by the Respondent. The Applicant was nowhere so that were it not for the Respondent nothing much could have been achieved. The court will therefore take into account this.
33. The court will refrain from earmarking specific property to either of the parties. They may hereafter decide on their own which property each must have if it is possible to subdivide.
34. I have seen the valuation reports made by the Applicant without the concurrence of the Respondent. These may help them after this. For now and because they were not mutually undertaken it shall only remain so and part of court's record.
35. Consequently, and for the above reasons it is my considered view that the enumerated properties above be shared in the ratio of 30% in favor of the Applicant RWW and 70% in favor of the Respondent JMN.
36. Each party shall meet their respective costs.

DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAIROBI THIS 17TH DAY OF OCTOBER 2024.

H K CHEMITEI

JUDGE

