



**KKN v CNG (Civil Suit 14 of 2018) [2024] KEHC 14592 (KLR)
(Family) (21 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14592 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
CIVIL SUIT 14 OF 2018
PM NYAUNDI, J
NOVEMBER 21, 2024**

BETWEEN

KKN APPLICANT

AND

CNG RESPONDENT

JUDGMENT

1. The Applicant herein, took out Originating Summons dated 1st March 2023. He filed an undated Amended Originating Summons seeking the following orders;
 1. That it be declared that all these properties described as Plot Number 18 Roysambu III L.R Number 7959 situated in Mirema Drive, Canaanland Estate and property on Land Certificate Number 021151 title/registration documents not yet issued and Land Title Number Ngong/ Ngong/50977 registered in the name of the Applicant are held for the benefit of the Applicant and the Respondent. The court be pleased to order that the same are owned jointly in equal shares by the Applicant and the Respondent herein and that the said properties are for the benefit of both parties.
 2. That it be declared and decreed that the motor vehicle registration no. KBT 029 U and registered in the names of the Respondent is held for the benefit of the Applicant and the Respondent. The court be pleased to order that the same is owned jointly in equal shares by the Applicant and the Respondent herein and that the said property is for the benefit of both parties.
 3. That the said properties be sold and the proceeds from the sale be apportioned equally between the Applicant and the Respondent.



4. That the Respondent be made to account for the rent proceeds in Land Certificate Number 021151 from 2016 to date.
 5. That the Honourable Court do order the aforesaid rent proceeds be equally shared between the Applicant and the Respondent.
 6. That in case the Respondent has sold any of the aforementioned properties, the Honourable Court do compel her to produce the sale agreement and subsequently grant an order requiring her to remit the Applicant's share.
2. The Summons was supported by the grounds on the face of the same and by the Affidavit of even date sworn by the Applicant.
 3. The Respondent entered appearance and filed a replying affidavit which was sworn by her advocate. She sought to rely on the Replying affidavit as her evidence when the matter came up for hearing. The court found that her counsel was not competent to depone on issues that were contested and therefore struck out the impugned affidavit. The Respondent also failed to file submissions. The matter therefore proceeded as undefended.
 4. The Applicant states briefly that he and the Respondent got married in 2004. They solemnized their marriage in 2007 at St. Marks Church in Westlands. Their marriage was blessed with two issues. Their marriage has since been dissolved. During the subsistence of their marriage, they acquired properties known as Plot Number 18 Roysambu III L.R Number 7959 situated in Mirema Drive, Canaanland Estate, property on Land Certificate Number 021151 title/registration documents not yet issued, Land Title Number Ngong/Ngong/50977 registered in his name and Motor Vehicle Registration Number KBT 029U.
 5. They agreed that the Plot Number 18 Roysambu III L.R Number 7959 situated in Mirema Drive, Canaanland Estate be registered in the name of the Respondent for purposes of executing sale agreements and certificates while he acted as a witness. Property on Land Certificate Number 021151 generates monthly rental income of more than Kshs. 250,000. He started a stationary business which he ran with the Respondent who was unemployed. He would travel to China to invest on the business. The proceeds of the business were used to buy and develop all the properties acquired during the subsistence of their marriage. The Respondent enjoys the proceeds of the said business alone.

Evidence.

6. The Petitioner gave his oral evidence on 4th July 2024. He relied on the amended originating summons and the supporting affidavit as his evidence in chief. He asked the court to equally share the matrimonial properties between them.
7. In cross examination, he stated that he is the one who identified the properties. He contributed towards the purchase. He did not keep a record of the financial transactions and money he gave the Respondent for purchase.
8. In re-examination, he stated that they were joint business owners. He traded in motor vehicle, sold land and ballast.

Applicant's Submissions.

9. The Applicant's submissions are undated. Three issues were identified as coming up for determination, to wit: -



1. Whether the Properties named in the amended Originating Summons matrimonial properties and therefore held for the benefit of both the Applicant and Respondent.
 2. Whether the Respondent should account for Rent proceeds in Land Certificate Number 021151 from 2016 to date and thereafter remit to the Applicant his share.
 3. How the subject properties should be shared and/or divided.
10. The Petitioner submitted that the parties hereto were married in 2004 under Kikuyu Customary Law and solemnized their marriage in 2007. That the properties were acquired and developed during coverture. Because of that, he submitted that the same were matrimonial property and thus fell under the ambit of the *Matrimonial Property Act*. Reliance was placed on the case of *TMV vs FMC* [2018] eKLR. He further submitted that the law recognises a rebuttable presumption that the properties are held in trust for each party and that where a matrimonial property is held and/or registered in the name of one person but the other person made contribution to its acquisition, then each spouse has interests over the said property. Reliance was placed on the decision in *E.N.K v J.N.K and Njoroge vs. Ngari* [1985] KLR, 480.
11. On the second issue, counsel submitted that the Petitioner is entitled to his share of rental income collected from Land Certificate number 021151 as he took part in the acquisition and development and/or improvement of the same. He submitted that they could sit down with the Respondent and agree on how they could use the proceeds for the benefit of the family. That the Respondent should be directed to account for rental income generated from Land Certificate number 021151 since the year 2016 and remit ½ share of the same.
12. On how the subject properties should be shared and/or divided, it was submitted that should be equally shared as they were acquired and developed using the proceeds of the family business and more so during the subsistence of the marriage. He submitted that the same should be sold and the proceeds divided equally among the two or either party be at liberty to buy out the other person upon valuation of the subject properties.

Analysis And Determination.

13. I am of the view that there are 2 issues that this Court ought to determine: -
- i. Are the suit properties matrimonial property?
 - ii. Whether the Applicant is entitled to a 50% share in the suit properties and in the proceeds of rent in respect thereof.

Are the suit properties matrimonial property?

14. On what constitutes matrimonial property, I am guided by section 6 of the *Matrimonial Property Act* (herein referred as the Act) that 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. Under Section 2 of the Act, 'Matrimonial home' has been defined as:-
any property that is owned or leased by one or both spouses and occupied or utilized by the spouses as their family home, and includes any other attached property.
16. Section 14 of the Act provides that:
Where matrimonial property is acquired during marriage-
- (a) In the name of one spouse, there shall be a rebuttable presumption that the property is held in trust for the other spouse; and
 - (b) In the names of the spouses jointly, there shall be rebuttable presumption that their beneficial interests in the matrimonial property are equal.
17. Basically, for property to qualify as matrimonial property, it must meet the definition in section 6. In *T.M.W. v F.M.C* [2018] eKLR, Nyakundi J. opined that:-
...for property to qualify as matrimonial property, it ought to have been acquired during the subsistence of the marriage between the parties unless otherwise agreed between them that such property would not form part of matrimonial property.
18. The evidence adduced shows that Ngong/Ngong/50977 was purchased in 2010 and registered in the name of the Applicant, Land in Certificate number 021151 was acquired in 2011 and registered in the name of the Respondent, Plot Number 18 Roysambu III L.R Number 7959 was purchased on 4th July 2009 and registered in the name of the Respondent. The Applicant and the Respondent got married on 15th December 2007. Divorce proceedings were filed in 2016. The purchase of these properties took place at a time the marriage was subsisting. I therefore find and hold that the properties are matrimonial properties.

Whether the Applicant is entitled to a 50% share in the suit properties and in the proceeds of rent in respect thereof.

19. The Applicant has asked the Court to make a declaration that he is entitled to 50% of the suit properties and the rent derived therefrom. It is the Applicant's case that he made both monetary and non-monetary contribution towards the purchase of the properties registered in the name of the Respondent. No evidence was called to controvert his assertion. That notwithstanding no evidence was adduced in support of the assertion that the Respondent is collecting rent from the property(ies).
20. I have considered the evidence on record. The parties herein were married for over 14 years. The Applicant has one property registered to him while the Respondent has two properties registered in her name.
21. I find that both parties made both monetary and non-monetary contributions towards the purchase and development of the properties in question. The distribution of 50:50 share of the properties suggested by the Applicant reflects the joint effort of the parties to acquire and develop the assets. I will therefore direct that the assets be shared equally between the parties.
22. In the end, I make the following declarations and orders:
- a. A declaration is hereby made that the Applicant has a 50% beneficial interest in the following properties:



- i. Plot Number 18 Roysambu III L.R Number 7959 situated in Mirema Drive, Canaanland Estate
- ii. Property on Land Certificate Number 021151
- b. A declaration is hereby made that the Respondent has 50% beneficial interest in property known as Ngong/Ngong/50977.
- c. That the property be valued by a valuer to be nominated jointly by the Applicant and the Respondent within 14 days. In the event the parties are unable to agree on a valuer the Applicant shall appoint a valuer within 7 days
- d. The valuer so appointed to furnish report within 21 days. The Applicant will have the 1st option to buy out the Respondent's share in the property within 90 days of the offer being made.
- e. That the Respondent shall execute all the documents to facilitate the transfer within 21 days of delivery to the Applicant, in default the Deputy Registrar Family Division will execute the same.
- f. In default of the either party buying out the other the property shall be sold and the proceeds shared in the proportion of 50:50 between the parties
- g. That the Summons not having been defended there shall be no order as to costs.

DATED, SIGNED AND DELIVERED ON THE VIRTUAL PLATFORM, AT NAIROBI THIS 21st DAY OF NOVEMBER, 2024.

PATRICIA NYAUNDI

JUDGE

In the presence of;

Fardosa Court Assistant

