



**JN v EG (Civil Case 14 of 2016) [2024] KEHC 15417 (KLR) (5 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 15417 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CIVIL CASE 14 OF 2016  
EM MURIITHI, J  
DECEMBER 5, 2024**

**IN THE MATTER OF ARTICLES 27(3), (4), 40, 43 AND 45 (3) OF THE CONSTITUTION  
AND  
IN THE MATTER OF MATRIMONIAL PROPERTIES ACT, 2013**

**BETWEEN**

**JN ..... APPLICANT**

**AND**

**EG ..... RESPONDENT**

**JUDGMENT**

1. By a Notice of Motion under certificate of urgency pursuant to Sections 1, 1A, 3 & 3A of the Civil Procedure Act, Order 51 (1) of the Civil Procedure Rules, Articles 27 (3) & (4), 40, 43 and 45 (3) of the Constitution, the Applicant/Plaintiff seeks that:

1. Spent
2. Spent
3. The Honorable Court be pleased to issue an order compelling the Respondent to give the Applicant access to one of the two bedroomed residential houses situate on Plot No. 214 Kooje Estate pending the interpartes hearing of this application.
4. The Honorable Court be pleased to issue an order compelling the Respondent to give the Applicant access to one of the two bedroomed residential houses situate on Plot No. 214 Kooje Estate pending the interpartes hearing of the main suit.
5. The Honorable Court be pleased to issue an order compelling the tenants in the three rental residential, two bedrooms houses, the five rental residential, single rooms built on land parcel no.Ntima/Igoki/4086 and the two rental residential, two bedroomed house built on plot



no 214 Kooje Market to start depositing rent in Court or in a joint account between the Applicant's Advocate and the Respondent/Advocate or as the Court may direct pending the hearing and determination of the main suit.

6. The costs of the application be in the cause.
2. The application is premised on the grounds on the face of it and supporting affidavit of the Applicant/Plaintiff herein sworn on even date. She avers that on 7/5/1983, the Respondent and her entered into a civil marriage and lived together until 12/4/2016 when they divorced. During the subsistence of their marriage, they jointly acquired two rental residential two bedroomed houses built on Plot No. 214 of Kooje Estate, the residential house built on Parcel No.Ntima/Igoki/4086, three rental residential two bedroomed houses built on parcel No.Ntima/Igoki/4086 and five rental residential single rooms built on Ntima/Igoki/4086. She is a teacher by profession and all the aforementioned properties were acquired through a loan she had secured using her salary, which she is still servicing. She was staying with the Respondent until January 2015 when he kicked her out of their matrimonial home situated on Ntima/Igoki/4086 forcing her to rent a place to live. The Respondent continues to collect rent from their tenants and keeping it to himself while she still repays the loan and lives in a rental house.
3. The Applicant swore a further supporting affidavit on 4/11/2016 in support of her application.
4. In his replying affidavit sworn on 19/8/2016, the Respondent/Defendant avers that on 8/6/1989, he purchased ¼ a share of L.R No.Ntima/Igoki/4086 from Julius Kirrinya M'Turuchiu without any input from the Applicant, save for minimal emotional support. He purchased plot No. 214 Kooje Estate vide a Tenancy Purchase Agreement from the now defunct Municipal Council of Meru. Neither Plot No. Kooje Estate nor L.R No.Ntima/Igoki/4086 were purchased using loans or with funds provided by the Applicant. The developments on Plot No. 214 Kooje Estate were financed by a loan he took out which he still repays to date. During the subsistence of their marriage, the Applicant acquired L.R No. Thau/Mumui/1/1212, with his financial and emotional support. He is advised by his advocate that due to the support he provided the Applicant during the subsistence of their marriage in the long, drawn out process of acquisition of L.R No. Thau/Mumui 1/1212, he is entitled to an equal or equitable share thereof. He is further advised that this Court should take into account all properties acquired by both spouses during the subsistence of the marriage and not only the properties acquired by the husband.

## Statements

5. Titus Kimathi, Christine Karimi and Caroline Nkirote, the children of the parties herein, filed their statements dated 4/11/2016 in support of the application. They urge that the Applicant paid their school fees until completion. Even when their father, the Respondent herein enrolled at Kenyatta University in 2005, his school fees was also paid by the Applicant, who was then earning over Ksh. 11,000 while the Respondent earned less than Ksh. 5,000. Sometimes in 1996, their father kicked their mother out of the house and they went to live at their maternal grandparent's home for 3 years. Thereafter, the Applicant purchased L.R No. Thau/Mumui 1/1212 where they settled. Throughout their childhood, the Respondent would demand for money from the Applicant using threats and he would trick her into taking loans using her salary for purposes of developments which would then be registered in his name. The Applicant has brought them up single handedly because the Respondent never provided anything in the house. The Applicant is the one who largely, if not wholly contributed to the acquisition of the properties and she is therefore entitled to a larger share.
6. The Respondent filed his statement dated 11/12/2019 rehashing the averments in his replying affidavit.



## Oral Evidence

7. PW 1 Jane Nchekei Githitu and the Applicant herein adopted her affidavits in support and further affidavits as her evidence in chief. She produced annexures JNA (a) and (b) as Exh. 1(a) and 1(2), payslip as Pexh. 2 and Sale Agreement and acknowledgement receipt as PEx. 3(a) and (b).
8. She testified that; “I am a nurse. I am the Plaintiff. I conducted a Divorce Cause in 2015- CM Div. Case No. I filed the Originating Summons dated 9/6/2016. After the Divorce. I have the affidavit of 9/6/2016 in support of the Originating Summons. I also filed a further Affidavit sworn on 14/11/2016 in reply to the Respondent Replying Affidavit of 18/8/16. I have annexures to the supporting Affidavit. I wish to rely on Affidavit as evidence in Chief. I claim in the Originating Summons for orders. I claim two Plots Block 214 Kooje Estate and Ntima/Igoki/4086. On Kooje Plot 214 there are 2 house residential. I am the one who lives on the houses. The two plots are registered in the names of the Respondent. I have no official search for both Supporting Affidavit Annexure FNI (a) and (b) respectively from plot 214 and Plot 4086. I contributed to the property we got married in 1993. At the time, he was watchman Primary School he was earning a salary of 665/- per month and I am qualified nurse with Diploma. After 6 months, he went for P1 course at Igoji. I supported and financed him for the two years that he was in college. I was qualified in 1982 for Kenya Medical Training College Nairobi with Diploma in Nursing. I earned a salary. I have attached pay slips as JN 2. I contributed to the purchase of plots. The first plot we bought was 214 Kooje in 1987. This was during the pending of our marriage. The other property 4086 was bought in 1989. I have seen the Replying Affidavit “ENG 1” annexure showing the sale Agreement. I also give the Sale Agreement for Kooje Plot of 17/9/1985 Tenant Purchase Agreement ENG 2. I was not living on Plot 214 Kooje which was rented out. Our marriage had problems and because of these problems most of the times we had issues and I would be thrown out of matrimonial home at plot No. 4086. Especially 1996 he removed me for four years. I went to plot No. 214 in 2015 where the Court gave me an order to stay. I was then staying at Kinoru rented house. I got an order from Justice F. Gikonyo from 2015 after the divorce. The order was made in this cause. The Respondents lives in our matrimonial home Plot No. 4086. On Plot 4086 are three permanent houses and four semi-permanent single rooms on ½ acre piece of land. Three of the permanent houses have been rented out at the time I left. The semi-permanent houses were all having tenants at the time. I claim for share for what I worked hard to acquire the property, to support the children and to support children and to support the Respondent. I have nothing for my own for the years I stayed him. I claim a share of all we have with him. I have contributed 80% to all what we have. I want the Court to determine the issue.

Replying Affidavit there is a property he claim to have bought for me. Thau/Mumui/1212. He had thrown me away from home between 1996-2000 a period of 4 years. I went back home to live with my parents at Thau. I lived with my father as my mother had died early. I lived with my father and stepmother. My father assisted me to acquire a Plot at Thau in 1998. I have a sale Agreement dated 26/10/1998. List of documents of 24/7/2020. The title to the parcel Thau/Mumui 1/1212 is registered in my name. The custody of the original title was with the Respondent. I pray that the Court directs the Respondent to give me my title. I bought the land with my father’s assistance when I was desperate living with father and my stepmother and I came back with it to the matrimonial home in 2020. The title is a “EGN 5” on the Replying Affidavit.

Both emotional and financial Support for the purchase of the plot?

He was not around at the time I bought the land. I came back with the title. When I learnt I had a title he wanted us to sell it. He never wanted me to have the land. The owner of the land died and the children went and said I owed them money. It was not the issue of me and my husband. It is not true



that I was summoned by the chief over any dispute. I was summoned over the purchase when they thought I had not completed the payment. I have not seen any payslip from the Respondent on the payment of the land on developing the land. I am aware of a loan he took for development of Kooje plot. It was a loan of Kshs. 600,000/= The money was not enough to complete the house. I took a loan and completed the construction. Pay slips I have shown the loans that I have taken. I was educating our children. The Respondent was in school most of the time through P1-degree and masters. There are payslips recovery of 1.8 million. This was for developing plot No. 4086. I am staying at plot 214. I do not pay rent, I am retiring soon but I have nowhere to go. I pray that the Court gives me something that I can have something.”

9. On cross examination, she stated that, “I took out loans and I have produced the slips before the Court. What is evidence to show on the payslips that the loan was for construction of the plot. The Sacco forms have the reason for the loan. I took the loan when we were married.

How do we know that the loans were taken in the date that you allege?

Respondent was earning 665/=. Any payslips? I do not have his statement. I funded his college. The evidence is that he was earning 665/=. I have no evidence.

House on plot 4086 when were they constructed?

They were constructed in 2000 when I came back. It had semi-permanent houses. In 2000 I took a big loan and we constructed a matrimonial house which was completed in 2003. When we bought the plot in 1989. We constructed semi-permanent rooms. I contributed 80%.

How much did you contribute?

The Plot was bought at 60-70,000. I bought the plot with my money. After that, we started constructing semi-permanent four rooms. The Respondent did not give any money for the purchase or construction of the semi-permanent houses.

Thau/Mumui/1212.

[Witness is referred to title on P. 77 of Bundle of documents]

Title issued on 7/3/2006. Did you not mislead Court that you came home with the title in 2000? It taking a process to buy a plot and get a title. It is correct that title was obtained in 2016 but it took a process from 1998 to 2006.

Between 2000-2006. I was living with Elijah. Did he help in getting the title. I had already bought the land. The dispute came and the respondent was supporting me when going to the Chief?

Evidence of payment by Elijah Kooje plot 214.

[Witness is referred to bundle of receipts at P. 29, 32 33-39 of Bundle of the Respondents documents] Receipts are in the name of Elijah. The payments were towards payment of Plot 214 Kooje.”

10. On re-examination, she stated that, “The purchase of Plot No. 214 Kooje was 65,000/= (ENG 2). Receipts at P. 33-1<sup>st</sup> first receipt was for 642/=: 2<sup>nd</sup> for 3210/= 3<sup>rd</sup> for 3000/=: 4<sup>th</sup> 2000/= only. I used to give him money to go and pay as I was living with the respondent as my husband. I have contributed



more than 80%. The purchase price for 4086 was 17,000/= . Sale Agreement ENG 1. I have not seen any receipts for the payment.

Accompaniment to Chief's dispute?

The respondent did not contribute anything financially to Thau plot. Exhibit No 3(a). The Respondent is not even a witness. It is witnessed by my brother and neighbor. When I married there was a condition that we have a joint account. It is that time when I opened a single account that we started having problems.”

11. DW1 Elijah Gichunuku Nkubitu and the Respondent herein adopted his statement dated 11/12/2019 as his evidence in chief. He went on to state that, “I stay at Maua in Meru Town. I am a retired graduate teacher. Jane Nchekei was my wife. We were married in 1983, 7<sup>th</sup> May 1983. We divorced on 16<sup>th</sup> April, 2016.

I had my properties.

1. Plot 4086 – Ntima, Igoki.
2. Kooje National Housing Corporation No. 214 at Meru Estate Kooje.

I used to have loans and I was having farm produce. I paid off the loans. For Kooje in 188 months between 1988-24 years.

Ntima Igoki/4086.

I started transaction for purchase in 1987 and cleared in 1992 and obtained title deed.

Developments

There are developments in Igoki/4086. There are 4 permanent houses, Three of them, 2-bedroomed and the other 3-bedroom. There is semi-permanent timber houses 4 rooms. There is a small partition which I used as a kiosk. Kooje One house in the beginning and latter I put up another one. The first house was by NHC and I put it up my-self. I did the developments personally. When I was employed I joined Mwalimu Sacco in 1984 and retired 2019. I have been taking development loans and I also used some to farm and my father's farm I finished the development alone. We separated in 1990-1993. We reconciled and thereafter in 1996-2002. We were separated. We reconciled again and the third separation in 2006-2016.

[I have memory lapses]

During the period of Separation, I have lived and developed the parcels. I lived in Kooje and later at 4086 in 1994.”

12. On cross examination, he stated that, “Statement of witness.

Is there any evidence of separation in the statement?

It is not there. I do not have anything before the Court to show we were separated. There were no divorce proceedings. Property acquired during the existence of the marriage. We married in 1983 and divorced in 2016. The properties were acquired during the existence of the marriage. On both properties we raised our children. We first lived at Kooje and later 4086. On both properties. Matrimonial property, we lived on both properties. We had separate developments. We have lived on both properties as family.

Sale Agreement and receipts



Goods, seats, cups was there any input by the wife? When she left she carried everything. I do not remember an input.

Interest in property belonging to plaintiff

Any counter-claim in this suit?

I have not put a counter-claim. Jane is now in occupation of Kooje. The property is occupied by my children. My wife is also there.

Are you saying she should not get a share in both property?

She has her property 1212.

[Statement claims a bigger share to the property]

I put that one when the Supreme Court had not ruled in the matter. It is my statement. I have not filed any statement.

Property 1212. Any receipts?

I have not produced any receipts. I do not deny that she bought it. I have letter of the Chief complaining. The property 1212 was bought in 1999 and they got the title in 2006 with my help.

Share for the plaintiff

She did not contribute anything to the property.”

13. On re-examination, he stated that, “Receipts for contribution on purchase of 1212. I followed on title and there was a dispute with the lawyers.”

### **Submissions**

14. The Applicant/Plaintiff urges that pursuant to section 14 of the Matrimonial Properties Act, there exists a rebuttable presumption that matrimonial property acquired during the subsistence of the marriage in the name of one spouse is held in trust for the other spouse. She urges that L.R No. Thau/Mumui 1/1212 does not form part of the matrimonial properties as it was bought during the separation between the parties in 1990-1993, and the Respondent did not make any contribution to its acquisition. She urges that she provided both monetary and non-monetary contribution as she was gainfully employed as a nurse earning way more than the Respondent, and she also raised the children ensuring their educational needs were met. She urges that her contribution is higher than that of the Respondent, and cites JOO v MBO; Federation of Women Lawyers (FIDA Kenya) & Another (Amicus Curiae) (Petition 11 of 2020) [2023] KESC 4 (Family) (27 January 2023) (Judgment) and Echaria v Echaria (Civil Case 663 of 2007; [2007] eKLR).
15. The Respondent/Defendant maintains that although the properties were acquired during the subsistence of their marriage, they were acquired without the help of the Applicant. He faults the Applicant for failing to prove direct contribution towards the two properties registered in his name, and cites TMW v FMC (2018) eKLR.

### **Analysis and Determination**

16. The undisputed facts of the case are that the parties herein formalized their union on 7/5/1983, but the said union was dissolved on 12/4/2016 after it had irretrievably broken down. During the subsistence of their marriage, they acquired Plot No. 214 Kooje Estate, Parcel No.Ntima/Igoki/4086 and L.R No. Thau/Mumui 1/1212.



17. There is no doubt that the aforementioned properties are matrimonial properties within the meaning of 6 of the *Matrimonial Property Act*.
18. Whilst the Applicant contends that she was the majority contributor towards the acquisition of the matrimonial properties, the Respondent is adamant that the properties were solely acquired by him without any assistance either financially or otherwise from the Applicant.
19. The duty of the Court is determine whether the Applicant has proved her case on a balance of probabilities. In an oft-cited case *Re H & R (minors)* [1996] AC 563, [1995] UKHL 16, [1996] 2 WLR 8, [1996] 1 All ER 1, the House of Lords considered the meaning of proof on, and the test of balance of probability and Lord Nicholls of Birkenhead explained:
- “The balance of probability standard means that the Court is satisfied an event occurred if the Court considers that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities the Court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the Court concludes that the allegation is established on the balance of probability.”
20. Section 107 of the *Evidence Act* places the burden of proof on the Applicant as follows:
- “1. Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. 2. When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”
21. Section 108 of the *Evidence Act* provides as follows;
- “The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.”
22. The Applicant testified that she acquired Thau/Mumui 1/1212 in 1998 during her stay with her father after the Respondent threw her out of their matrimonial home. She was categorical that she bought the land with assistance from her father. While the Court accepts that the Applicant solely purchased Thau/Mumui 1/1212 during her separation from the Respondent in 1998, it acknowledges the Respondent’s admittedly minimal assistance in form of emotional support towards the acquisition of the title thereto later in 2006 when the Applicant had returned to her matrimonial home. The Applicant indeed alluded as much in her testimony that, “Title issued on 7/3/2006...The dispute came and the respondent was supporting me when going to the Chief.”
23. The Court finds that the Applicant has rebutted the presumption that the said property was registered in her name of the Applicant in trust for the Respondent, in terms of Section 14 of the *Matrimonial Property Act* as follows:
- “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.”
24. It is trite since *Peter Mburu Echaria v Priscilla Njeri Echaria* [2007] eKLR which was approved by the Supreme Court in *JOO v MBO; Federation of Women Lawyers (FIDA Kenya) & another*



(Amicus Curiae) (Petition 11 of 2020) [2023] KESC 4 (KLR) (Family) (27 January 2023) (Judgment) considering section 17 of the Married Women Property Act 1882 on which section 17 of the Matrimonial Property Act 2013 is based that:

“Section 17 of the 1882 Act gives the Courts discretion to grant appropriate remedies upon ascertainment of the respective beneficial interest in a disputed property. The same remedies as are available in law in property disputes in ordinary actions are also available in disputes between husband and wife under section 17. The Court has jurisdiction after the adjudication of the dispute, to allocate shares of the disputed property as it may deem just and order the transfer of the share to the rightful beneficial owner to give effect to its decision.”

25. The Supreme Court in *J.O.O. v. M.B.O.*, *supra*, settled the question of equality of spouses at dissolution of marriage under Article 45 (3) of the Constitution as follows:

(99) We find the above opinions and findings persuasive and it is our finding that the stated equality under Article 45(3) means that the courts are to ensure that at the dissolution of a marriage, each party to a marriage gets a fair share of the matrimonial property based on their contribution. This is best done by considering the respective contribution of each party to ensure no party is unfairly denied what they deserve as well as ensuring that no party is unfairly given more than what he or she contributed.”

26. The jurisdiction of the Court to divide matrimonial property between spouses and former spouses is underpinned under section 7 of the Matrimonial Property Act, which provides as follows:

“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.”

27. Section 2 of the Matrimonial Property Act defines contribution to include monetary and non-monetary contribution. Non-monetary contribution includes domestic work and management of the matrimonial home; child care; companionship; management of family business or property; and farm work.

28. Section 9 of the Matrimonial Property Act provides for acquisition of interest in property by contribution as follows:

“Where one spouse acquires property before or during the marriage and the property acquired during the marriage does not become matrimonial property, but the other spouse makes a contribution towards the improvement of the property, the spouse who makes a contribution acquires a beneficial interest in the property equal to the contribution made.”

29. Here, Plot No. 214 Kooje Estate and L.R. No. Ntima/Igoki/4086 (hereinafter called the disputed properties) are both registered in the name of the Respondent. The Applicant has led irrefutable evidence that she directly and indirectly made substantial contributions to the acquisition and development of the disputed properties. She testified that; “I claim two Plots Block 214 Kooje Estate and Ntima/Igoki/4086. On Kooje Plot 214 there are 2 houses residential. I am the one who lives on the houses...I contributed to the property we got married in 1993. At the time, he was watchman Primary School he was earning a salary of 665/- per month and I am qualified nurse with Diploma. After 6 months, he went for P1 course at Igoji. I supported and financed him for the two years that he was in college. I was qualified in 1982 for Kenya Medical Training College Nairobi with Diploma in Nursing.



I earned a salary...I contributed to the purchase of plots. The first plot we bought was 214 Kooje in 1987. This was during the pending of our marriage. The other property 4086 was bought in 1989... The Respondent lives in our matrimonial home Plot No. 4086. On Plot 4086 are three permanent houses and four semi-permanent single rooms on ½ acre piece of land. Three of the permanent houses have been rented out at the time I left. The semi-permanent houses were all having tenants at the time. I claim for share for what I worked hard to acquire the property, to support the children and to support children and to support the Respondent. I have nothing for my own for the years I stayed him. I claim a share of all we have with him. I have contributed 80% to all what we have...I am aware of a loan he took for development of Kooje plot. It was a loan of Kshs. 600,000/= The money was not enough to complete the house. I took a loan and completed the construction. Pay slips I have shown the loans that I have taken. I was educating our children. The Respondent was in school most of the time through P1-degree and masters. There are payslips recovery of 1.8 million. This was for developing plot No. 4086. I am staying at plot 214. I do not pay rent.”

30. She reiterated on cross examination that; “I took the loan when we were married...Respondent was earning 665/=...I funded his college. House on plot 4086 when were they constructed? They were constructed in 2000 when I came back. It had semi-permanent houses. In 2000 I took a big loan and we constructed a matrimonial house which was completed in 2003. When we bought the plot in 1989. We constructed semi-permanent rooms. I contributed 80%. How much did you contribute? The Plot was bought at 60-70,000. I bought the plot with my money. After that, we started constructing semi-permanent four rooms. The Respondent did not give any money for the purchase or construction of the semi-permanent houses.”
31. On re-examination, she stated that; “The purchase of Plot No. 214 Kooje was 65,000/= (ENG 2). Receipts at P. 33-1<sup>st</sup> first receipt was for 642/=, 2<sup>nd</sup> for 3210/= 3<sup>rd</sup> for 3000/=, 4<sup>th</sup> 2000/= only. I used to give him money to go and pay as I was living with the respondent as my husband. I have contributed more than 80%.”
32. Her testimony was corroborated by Titus Kimathi, Christine Karimi and Caroline Nkirote, her children vide their statements of 4/11/2026. They affirmed that their school fees and that of the Respondent were paid by their mother, the Applicant herein. It was their testimony that the Applicant brought them up single handedly because the Respondent never provided anything in the house, and the Applicant is the one who largely, if not wholly contributed to the acquisition of the properties and she is therefore entitled to a larger share.
33. On his part, the Respondent maintained that the Applicant had made zero contribution to the acquisition and development of the disputed properties. He testified that; “I had my properties. 1. Plot 4086 – Ntima, Igoki. 2. Kooje National Housing Corporation No. 214 at Meru Estate Kooje. I used to have loans and I was having farm produce. I paid off the loans. For Kooje in 188 months between 1988-24 years.

Ntima Igoki/4086.

I started transaction for purchase in 1987 and cleared in 1992 and obtained title deed. There are developments in Igoki/4086. There are 4 permanent houses, Three of them, 2-bedroomed and the other 3-bedroom. There is semi- permanent timber houses 4 rooms. There is a small partition which I used as a kiosk. Kooje One house in the beginning and latter I put up another one. The first house was by NHC and I put it up my-self. I did the developments personally. When I was employed I joined Mwalimu Sacco in 1984 and retired 2019. I have been taking development loans and I also used some to farm and my father’s farm I finished the development alone. We separated in 1990-1993. We reconciled and



thereafter in 1996-2002. We were separated. We reconciled again and the third separation in 2006-2016. [I have memory lapses] During the period of Separation, I have lived and developed the parcels. I lived in Kooje and later at 4086 in 1994.”

34. On cross examination, he stated that “...We married in 1983 and divorced in 2016. The properties were acquired during the existence of the marriage. On both properties we raised our children. We first lived at Kooje and later 4086...We had separate developments. We have lived on both properties as family... Jane is now in occupation of Kooje. The property is occupied by my children. My wife is also there... She did not contribute anything to the property.”
35. The pay slips produced by the Applicant from December 2006 to Jan 2016 show that she was servicing a sacco loan of 340,270 while the Respondent has produced bank statements to show that he was repaying a loan between 2012 to 2016. On the balance of probabilities, this Court finds that it is more probable than not that those funds, which were without any doubt taken during the subsistence of the marriage, were appropriated in the acquisition and the subsequent development of the matrimonial properties.
36. There is no doubt in this Court’s mind that the Applicant has adduced uncontroverted and corroborated evidence that she made a considerable contribution to the acquisition and development of the disputed properties, and she is undoubtedly entitled to a larger share.
37. Just because the properties are registered in the name of the Respondent does not disentitle the Applicant, who made immensurable and unquantifiable contribution both directly and indirectly to their acquisition and development.
38. Courts have fortified that even where one spouse is unemployed and a stay at home mom, her indirect contribution by domestic work, management of matrimonial home, child care, companionship, management of family business or property and farm work, must be given due significance as the monetary and direct contribution made by the other spouse.
39. Accordingly, for the reasons set out above, the Court makes the following orders:
  1. The Plaintiff/Applicant contributed to the acquisition of L.R No.Ntima/Igoki/4086 and Plot No. 214 Kooje Estate.
  2. The Plaintiff/Applicant is entitled to a 60% share of the two properties on account of her monetary and non-monetary contribution to their acquisition and development, while the Defendant/Respondent retains 40% thereof.
  3. For avoidance of doubt, property knowns as L.R No. Thau/Mumui/1/1212 remains the sole property of the plaintiff/applicant.
  4. The parties are at liberty to apply as to the manner of implementation of the Orders of the Court herein.
  5. There shall be no order as to costs.

Order accordingly.

**DATED AND DELIVERED THIS 5<sup>TH</sup> DAY OF DECEMBER, 2024.**

**EDWARD M. MURIITHI**

**JUDGE**

Appearances:



Mr. Mutuma, J. for the Plaintiff.

Ms Kinyanjui for the Defendant.

