



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL SUIT NO. 54 OF 2018 (O.S)**

**IN THE MATTER OF DIVISION OF MATRIMONIAL PROPERTY**

**AND**

**IN THE MATTER OF SECTION 7,12& 17 OF THE MATRIMONIAL PROPERTY ACT NO. 49 OF 2013**

**AND**

**IN THE MATTER OF THE MATRIMONIAL PROPERTY**

**BETWEEN**

**AMK.....PLAINTIFF**

**AND**

**PKN.....DEFENDANT**

**JUDGMENT**

1. The Plaintiff filed this Originating Summons dated 29.8.2018 seeking the following orders:

(i) THAT it be declared that the property known as NAIROBI BLOCK xxx/xxx which was acquired by the Plaintiff during the Subsistence of the marriage between the Plaintiff and the defendant and registered in their joint names is owned 100 % by the Plaintiff

(ii) THAT the said Property be owned wholly by the Plaintiff.

(iii) THAT Costs of this Suit be provided for.

2. The Originating Summons was not opposed since the defendant did not file any response or appear in Court for the hearing of the case despite that he was served with the Summons and also the hearing notice.

3. The Plaintiff who testified Pw1 said in her evidence that she is a business woman.

4. She said she got married to the defendant on 7.9.1996 and the marriage was blessed with 3 issues as follows;

(i) KN born on 19.12.1986

(ii) PJM born on 16.1.1990

(iii) EN born on 26.5.1998

5. The marriage between the Plaintiff and the Respondent deteriorated and the parties filed a divorce which was granted and the decree nisi was issued which was made absolute on 15.1.2015.

6. The Plaintiff said that during the subsistence of the marriage, she bought the suit property known as NAIROBI BLOCK xxx/xxx situated at Githurai 44 which has a rental flat. It was registered in joint names.

7. She is now seeking to have the property transferred to her as the absolute owner.
8. I find that the Plaintiff's evidence is not controverted. The Matrimonial Properties Act provides that at the dissolution of a marriage, each party is entitled to equal rights over matrimonial property.
9. **Article 45 (3)** of the Constitution provides as follows:

***“Parties to a marriage are entitled to equal rights at the time of the marriage, during the marriage and at the dissolution of the marriage.”***

10. This means that each party is entitled to their share of contribution to the Property either directly or indirectly. **The Matrimonial Property Act, 2013** which received assent on 24<sup>th</sup> December, 2013, and commenced on 16th January, 2014. **Section 7** provides:

***“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.”***

Contribution is defined by **Section 2** to mean monetary and non-monetary contribution. Non-monetary contribution 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**

“Family business” means any business which -

- a. is run for the benefit of the family by both spouses or either spouse; and**
- b. generates income or other resources wholly or part of which are for the benefit of the family;”**

10. In the current case, I find that if a property is registered in joint names, there is a rebuttable presumption that the Property is owned jointly.

11. In the case of **V W N v. F N [2014] eKLR** the court said that;

***“The provisions of Sections 2, 6 and 7 of the Matrimonial Property Act, 2013 breathe life into the rights provided in Article 45 (3). The Matrimonial Property Act recognizes that both monetary and non monetary contribution should be taken into account in determining contribution. In light of Article 45 (3) and Section 2 of the Matrimonial Property Act which define contribution to mean monetary and non monetary contribution, Echaria [supra] is no longer good law.”***

12. In the current case, there is uncontroverted evidence that it is the Plaintiff who acquired the property and she had it registered in the joint names of the Plaintiff and the defendant.

13. In the case of **P N N v Z W N [2017] eKLR** the court looked at local authorities and came up with the decision that each spouse has to prove the contribution made in acquiring the matrimonial property:

***“In all the cases involving disputes between husband and wife over beneficial interest in the property acquired during marriage which have come to this Court, the court has invariably given the wife an equal share (see Essa vs. Essa (supra); Nderitu vs. Nderitu, Civil Appeal No. 203 of 1997 (unreported), Kamore vs. Kamore (supra); Muthembwa vs. Muthembwa, Civil Appeal No. 74 of 2001 and Mereka vs. Mereka, Civil Appeal No. 236 of 2001 (unreported). However, a study of each of those cases shows that the decision in each case was not as a result of the application of any general principle of equality of division. Rather, in each case, the court appreciated that for the wife to be entitled to a share of the property registered in the name of the husband, she had to prove contribution towards the acquisition of the property. The court considered the peculiar circumstances of each case and independently assessed the wife's contribution as equal to that of the husband.”***

14. In the absence of evidence to the contrary, I find that the presumption that the property was jointly acquired has been rebutted by the Applicant's evidence that she solely bought the same.

15. I accordingly enter Judgment in favour of the Plaintiff against the defendant in the following terms.

**(i) THAT the suit property known as NAIROBI BLOCK xxx/xxx which was registered in joint names be and is hereby**

**declared owned 100% by the Plaintiff.**

**(ii) That the said Property to be transferred to the Plaintiff's name.**

**(iii) THAT the Plaintiff to bear the Costs of this suit.**

**DELIVERED, SIGNED AND DATED IN OPEN COURT THIS 5<sup>TH</sup> DAY OF APRIL, 2019**

**ASENATH ONGERI**

**JUDGE OF THE HIGH COURT OF KENYA, NAIROBI**