



**AOS v ASS (Family Originating Summons E092 of 2024)
[2025] KEHC 13753 (KLR) (Family) (24 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 13753 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
FAMILY ORIGINATING SUMMONS E092 OF 2024
CJ KENDAGOR, J
SEPTEMBER 24, 2025**

BETWEEN

AOS APPLICANT

AND

ASS RESPONDENT

JUDGMENT

1. The parties herein were previously married but they divorced on 6th July, 2023. The Applicant filed an amended Originating Summons dated 9th January, 2025 seeking division of the matrimonial property. She requested the Court to declare the following properties as matrimonial properties;
 - a. Title Number Bokoli/Kituni/XXXX-0.045 Hectares in joint names.
 - b. Title Number E. Bukusu/N. Kanduyi/XXXX- 0.08 Hectares in joint names.
 - c. Title Number Bokoli/Kituni/XXXX- 0.05 Hectares in the name of Aron Sikuku Situma (Matrimonial Home).
 - d. Motor Vehicle KDJ XXX F.
 - e. Motor Vehicle KDP XXX M.
 - f. Motor Vehicle KCB XXXX.
 - g. Motor Vehicle KBP XXXX.
 - h. Motor Vehicle KDJ XXX F.
 - i. Motor Vehicle KAQ XXXX.



- j. Motor Vehicle KBE XXXX.
 - k. Motor Vehicle KAP XXXX.
 - l. Motor Vehicle KAL XXXX.
 - m. Motor Vehicle KCL XXXX.
 - n. Motor Vehicle KCV XXXXX.
 - o. Motor Vehicle KDK XXXXX.
 - p. Motor Vehicle KDM XXXXX.
 - q. Motor Vehicle KCB XXX X.
 - r. Business named Eagle Health and Clinic Services.
 - s. Savings in Co-operative Bank account number XXXXXXXXXXXXXXXX
 - t. Motor Cycle Registration Number XXXXXXXX.
2. She asked this Court to declare that she made contribution, financial and non-financial to the acquisition and maintenance of the properties listed in (1) above and thus she is entitled to a 50% share of the said properties.
 3. The grounds of the OS were enlisted on the face of the OS and supported by an affidavit sworn by the Applicant and dated 9th January, 2025. She averred that they acquired the above properties during the subsistence of their marriage through their joint contribution, financial and non-financial. She stated that she was working at AIC Cure International Hospital Kijabe earning a salary of Kshs.78,408.40/ = per month which she used to cater and meet the family needs, utility bills, food, as well as invest in the family business. She averred that in addition to the financial support, she was also doing other non-monetary contributions while they were both busy at work.
 4. The Respondent filed a Replying Affidavit dated 4th March, 2025 in which he averred that some of the properties that the Applicant had listed did not constitute their matrimonial property. He stated that Motor Vehicle KAQ 154N, KBE 099Y, KAP 196B, and KAL 043P were sold during the substance of their marriage long before separation, and some have long been transferred to the names of other parties, and as such do not constitute their matrimonial property. He also averred that he purchased Motor Vehicle KCV 278H after they had separated and he has since sold it to one Joshua Odhiambo and as such it does not constitute matrimonial property.
 5. He also stated that he bought Motor Vehicle KDP XXXM, KDK XXXX, and KDM XXXX after their divorce and as such, do not constitute matrimonial property capable of distribution between themselves. He also averred that KCL 261H, KDP XXXM and KDJ XXXF are tools of trade for Eagle Health and Clinic Services and as such, do not constitute and are not available for distribution as their matrimonial property. He stated that Motor Vehicle KCB XXXX is registered in their joint names and he had no objection to the Applicant having the same.
 6. In addition, he averred that Motor Vehicle KBP XXXX is registered solely in his name and he acquired the same from his own personal resources and the same does not thus constitute their matrimonial property. Lastly, he stated that he began the process of purchasing the motor cycle XXXXXXXX after their separation in 2018 and that he is yet to finalize the purchase. He averred that the said motor cycle is still registered in the name of the vendor Mark Holdings Ltd. and as such, does not constitute part of their matrimonial property.



7. He also stated that he was the brainchild of Eagle Health and Clinic Services and the same was not jointly established as a family business, and the same does not constitute matrimonial property. He also averred that he equally contributed non-monetarily in taking care of the Applicant, their home, and their children as the Applicant was similarly working. He stated that he contributed to the Applicant's development and growth by taking her back to school and paying her fees at Zedek College and the Kenya Methodist University where she acquired various Diplomas.
8. The Applicant filed a further affidavit dated 12th March, 2025 whose contents I have carefully considered. She generally reiterated the contents of the Amended O.S and her supporting affidavit dated 9th January, 2025. The Respondent similarly filed a supplementary affidavit dated 16th April, 2025 whose contents I have carefully considered. He stated that they have never lived on LR. No. Bokoli/Kituni/XXX as their matrimonial home as that he started developing LR. No. Bokoli/Kituni/XXXX after they had separated. He averred that the Applicant is not entitled to an automatic share of 50% and that the Court should ascertain the exact extent of her monetary contribution.
9. The O.S. was canvassed by way of written submissions. The Applicant filed her Submissions dated 27th March, 2025, and Supplementary Submissions dated 13th May, 2025. The Respondent filed his submissions dated 16th April, 2025.

Applicant's written Submissions

10. The Applicant submitted that all the properties listed in the Amended Originating Summons are matrimonial properties and that they should be shared equally between her and the Respondent. She argued that all the properties were acquired during the subsistence of their marriage and that they purchased the said properties through their combined monetary and non-monetary contributions. She submitted that her contribution was in form of monetary and non-monetary contributions.
11. The Applicant made specific submissions with respect to the acquisition of each of the properties listed in the O.S. Those lengthy submissions will not be restated here. Instead, her submissions on any particular property will be reproduced when the Court will be dealing with that particular property.

Respondent's written Submissions

12. The Respondent submitted that the Applicant is not entitled to a share of the listed properties, arguing that she did not produce evidence of contribution towards their acquisition. He submitted that even though their marriage was dissolved in July 2023, he had long separated with the Applicant in 2018, and were not living together since. He thus argued that the properties he acquired after his separation with the Applicant does not constitute matrimonial property. He also argued that some properties were sold during the subsistence of their marriage long before their separation and some have long been transferred to third parties and as such, they do not constitute matrimonial property.
13. Similarly, the Respondent made specific submissions with respect to the acquisition of each of the properties listed in the O.S. Those lengthy submissions will not be restated here. Instead, his submissions on any particular property will be reproduced when the Court will be dealing with that particular property.

Issues for Determination

14. I have considered the O.S application, the various affidavits, and the submissions by the respective parties. There only two issues for determination;



- a. Whether the Court should admit into evidence the Respondent's Supplementary Affidavit sworn on 16th April, 2025.
- b. Whether the Applicant is entitled to a share in each of the properties listed in the O.S.

Analysis of Evidence

15. Before I dive into considering the application, I noted that the Applicant's list of properties serialized (a) to (v) has some errors because there is a repetition on some of the properties listed. I noted that property number (d) was the same as property number (h), and that property number (f) was the same as property number (s).

Whether the Court should admit into evidence the Respondent's Supplementary Affidavit sworn on 16th April, 2025

16. The Applicant submitted that this Court should expunge from its records the Respondent's Supplementary Affidavit sworn on 16th April, 2025, arguing that the same was filed without leave of the Court. The Respondent admitted that the same was filed without leave of the Court, but he made an oral application on 7th May, 2025, asking the Court to admit the affidavit. The Respondent objected to the admission of the said affidavit, arguing that it brought new evidence namely, building plans. She argued that there must be a close of pleadings and that the law required the Respondent to seek leave in the circumstances.
17. This Court is being invited to determine whether it should admit into evidence the Respondent's Supplementary Affidavit sworn on 16th April, 2025. In determining this issue, I shall seek guidance from various authorities of the Court of Appeal, with a view to appreciating how the superior Courts have handled similar cases.
18. One of them is the decision of the Court of Appeal in the case of Abdirahman Abdi also known as Abdirahman Muhumed Abdi V. Safi Petroleum Products Ltd. & 6 others, Civil Application No. Nai. 173 of 2010. In this case, a notice of appeal was served on the respondent out of time and without leave of the Court. Upon being asked to strike it out, the Court (Omolo, Bosire and Nyamu JJ.A) observed that:-

“The overriding objective in civil litigation is a policy issue which the court invokes to obviate hardship, expense, delay and to focus on substantive justice.....

In the days long gone the court never hesitated to strike out a notice of appeal or even an appeal if it was shown that it had been lodged out of time regardless of the length of delay. The enactment of Sections 3A and 3B of the *Appellate Jurisdiction Act*, Cap 9 Laws of Kenya, and later, Article 159 (2) (d) of *the Constitution* of Kenya, 2010, changed the position. The former provisions introduced the overriding objective in civil litigation in which the court is mandated to consider aspects like the delay likely to be occasioned, the cost and prejudice to the parties should the court strike out the offending document. In short, the court has to weigh one thing against another for the benefit of the wider interests of justice before coming to a decision one way or the other. Article 159 (2) (d) of *the Constitution* makes it abundantly clear that the court has to do justice between the parties without undue regard to technicalities of procedure. That is not however to say that procedural improprieties are to be ignored altogether. The court has to weigh the prejudice that is likely to be suffered by



the innocent party and weigh it against the prejudice to be suffered by the offending party if the court strikes out its document. The court in that regard exercises judicial discretion.”

19. Based on the above authority, the decision as to whether a Court should admit a document filed without leave is a matter of judicial discretion. In addition, and still based on the above authority, this Court is required to weigh the prejudice that is likely to be suffered by the Applicant and weigh it against the prejudice to be suffered by the Respondent if the Court strikes out the Supplementary Affidavit.
20. I have looked at the said affidavit and analyzed its contents with a view to assessing the extent of prejudice likely to be suffered by the parties, if the Court rules either way.
21. The Applicant argued that the Supplementary Affidavit brought new evidence because it attached a Plaintiff and Building Plans. I have seen the said 2 attachments, and in my view, the two attachments have nothing prejudicial to the Applicant. For instance, the contents of the attached Plaintiff brings nothing new to the case because the Respondent had already attached a copy of the Judgment of the lower Court as an annexure to his replying affidavit dated 4th March, 2025. The said copy of the judgment outlines the contents of the now attached Plaintiff, and thus the attached Plaintiff is bringing nothing new to the case.
22. I have also seen the attached building plans and construction approvals attached to the affidavit. However, I noted that the said building plans and approvals are for LR. No. Bokoli/Kituni/XXX4, which number is different from any of the properties listed in the O.S. Thus, the said building plans and approvals cannot help the Respondent in making any argument because they refer to a different piece of land not subject to these proceedings.
23. The other annexure to the said supplementary affidavit is an official search for Bokoli/Kituni/XXXX. Upon considering all the evidence on record, it occurs to me that this is the only available documentary evidence that proves the existence of the said parcel. In my analysis, this piece of evidence is useful to both parties, but it is more useful to the Applicant than to the Respondent. This is because, even though the Applicant claims half a share of this parcel, she has herself not provided any other documentary evidence to show the existence of the parcel. It also shows the date of its acquisition, which in my view supports her case.
24. In addition, the Court gave the Applicant leave to file supplementary submissions, and the same was filed. I have considered the said submissions dated 13th May, 2025 at length. Moreover, the parties in this case preferred to issue affidavit evidence as opposed to viva voce evidence. Based on all this, I am persuaded that this is a proper case where this Court should exercise its discretion and allow the admission of the Supplementary affidavit. I find that the admission of the Supplementary evidence is not prejudicial

Whether the Applicant is entitled to a share in each of the properties listed in the O.S.

25. The question is what amounts to matrimonial property. This question is now well settled as under Section 6(1) of the *Matrimonial Property Act*, matrimonial property is defined to include matrimonial home or homes, household goods and effects in the matrimonial home or homes; or any other immovable and movable property jointly owned or acquired during the subsistence of the marriage.
26. The O.S contains 18 different properties. In the next part of this judgment, the Court will analyze each of the properties at a time.



Title Number Bokoli/Kituni/XXXX

27. The Applicant claimed that they established their matrimonial home on parcel Number Bokoli/Kituni/XXXX. She claimed that they constructed a four-bedroomed house through her income from her job, while some furniture was purchased by the Respondent. The Respondent, on the other hand, denied this. He stated that they have never lived on the said property as their matrimonial home contrary to what the Applicant alleges, and that the same was never their matrimonial home and thus does not constitute matrimonial property.

28. What constitutes a matrimonial home is defined under Section 2 of the *Matrimonial Property Act*, Act No. 49 of 2013 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.”

29. The Respondent in his replying affidavit stated that he practiced farming in Lugulu (on this property) and that the Applicant used to visit the said home every year in December. In my view, this is an indication that the parties treated this property as their matrimonial home, and I thus find the same.

30. Section 7 of the *Matrimonial Property Act* provides that ownership of Matrimonial Property depends on each Spouses' contribution. It specifically 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 the marriage is otherwise dissolved.”

31. Courts have developed a stable jurisprudence on the division of matrimonial property. The Court of Appeal in *EWM v MOM; ANM & another (Interested Parties)* (Civil Appeal 261 of 2019) [2022] KECA 796 (KLR) (24 June 2022) (Judgment) held as follows;

“Does this marital equality recognized in *the constitution* mean that matrimonial property should be divided equally, I do not think so. I take this view while beginning from the premise that all things being equal, and both parties having made equal effort towards the acquisition, preservation or improvement of family property, the process is of determining entitlement may lead to a distribution of 50:50 mantra. It is not an issue of mathematics merely as in splitting of an orange in two for.... Thus, it is that *the constitution*, thankfully, does not say equal rights “including” half of the property”. And it is no accident that when parliament enacted the *Matrimonial Property Act* 2013, it knew better than to simply declare that property shall be shared on a 50:50 basis rather, if set out in elaborate manner the principle that division of Matrimonial Property between Spouses shall be based on their respective contribution to acquisition.”

It is clear to us that the *Matrimonial Property Act* of 2013 recognizes and formalizes both the monetary and non-monetary contribution of parties in a marriage. The position is succinctly captured in *NWM Vs. KNM* [2014] eKLR where it was stated that the court must give effect to both monetary and non-monetary contribution that both the appellant and the respondent made during the pendency of marriage to acquire the matrimonial property.”



32. I also associate myself with the observations of the Court in the case of UMM v IMM [2014] eKLR, where the Court discussed the right to equality as provided for under Article 45 (3) and whether it decrees an automatic 50:50 sharing. He stated thus:

“I take the view that at the dissolution of the marriage each partner should walk away with what he/she deserves. What one deserves must be arrived at by considering her/his respective contribution whether it be monetary or non-monetary. The bigger the contribution, the bigger the entitlement. Where there is evidence that a non-monetary contribution entitles a spouse to half of the marital property then, the courts should give it effect. But to hold that article 45(3) decrees an automatic 50:50 sharing could imperil the marriage institution. It would give opportunity to a fortune seeker to contract a marriage, sit back without making any monetary or non-monetary contribution, distress the union and wait to reap half the marital property. That surely is oppressive to the spouse who makes the bigger contribution. That cannot be the sense of equality contemplated by article 45 (3).”

33. Based on the above authorities, the guiding principle is that a party's share to a matrimonial property is to be arrived by considering their monetary and non-monetary contribution.

34. The next issue is to determine the parties' respective contributions with respect to this property. This Court notes that the information about this property is very scanty, and the parties withheld crucial information that would have helped this Court make a determination.

35. The Applicant claimed she contributed to the acquisition and development of this property through financial and other non-monetary means. She however did not provide any evidence of direct financial contribution on the same. On the other hand, the Respondent claimed that he acquired the said property alone in 2018 and commenced developing the same without any contribution monetary and/or non-monetary from the Applicant. He argued that the Applicant did not contribute to its purchase because they had already separated by the time he was issued with the title deed on the 10th July, 2018.

36. I have seen the said title deed. It shows that the property was registered in the name of the Respondent in July, 2018. However, in my view, this is not a conclusive prove that this parcel was acquired on July 2018. There is a great possibility that the process of acquiring the parcel began when the parties were still happily married, and that there were delays in processing the title deed. The Respondent did not attach a sale agreement for the property, which would have helped this Court to know when the process of acquiring the property began.

37. In addition, the Respondent did not provide evidence of his financial contribution to the purchase and development of the said property. The evidence of the sale agreement would have showed the purchase price for the parcel of land and eventually help this Court ascertain the portion of the purchase price that each party contributed.

38. Having established that the property constitutes matrimonial home, and that there is no direct documentary evidence to apportion each parties' respective contribution, I find that this is a proper case where the property should be distributed equally between the parties, on a 50:50 basis.

Title Number Bokoli/Kituni/XXXX

39. The Applicant claimed a share of this property. She claimed that it is registered in their joint names, and measures 0.045 Hectares. She did not, however, provide documentary proof of the registration



or ownership status. On the other hand, the Respondent claimed that the Applicant is not entitled to a share of this property because she never contributed. He claimed that he started developing the property after he had separated with the Applicant. He produced building plan and approvals for this property which were issued by the County Government of Bungoma on 28th August, 2021.

40. I have seen the said building plan and approvals supplied by the Respondent. However, I noted that the said building plans and approvals are for LR. No. Bokoli/Kituni/XXX4, which number is different from that of the subject property. This Court is unable to determine whether the two numbers refer to one and the same parcel. It is also unable to determine the ownership status of the said parcel, whether it is jointly registered or whether it is in the name of the Respondent. In addition, the Court is also unable to determine when the said property was acquired, and whether it has been developed.
41. For these reasons, the Applicant's claim for this property fails.

Title Number E. Bukusu/N. Kanduyi/XXXX

42. The Applicant claimed a share of this property. She claimed that it is registered in their joint names, and measures 0.08 Hectares. She did not, however, provide documentary proof of the registration or ownership status. On the other hand, the Respondent argued that the Applicant is not entitled to an equal share of this particular property, claiming that he purchased and paid for this property solely without any contribution from the Applicant. He produced a copy of the sale agreement, payment acknowledgements and cheques in respect to the purchase of the said property.
43. I have seen the said documents. One of them is a sale agreement showing that the Respondent bought the said property from one Simon Raphael Juma on 5th April, 2018. There is also a payment acknowledgement by the said Simon, dated 16th April, 2018 in which he acknowledged having received Kshs.1,470,000/= from the Respondent as full payment of the purchase price for the said parcel. There were also two cheques showing the payments.
44. Based on this evidence, I find that the Respondent solely financed the purchase of the said parcel. This Court is however, unable to determine the ownership status of the said parcel, whether it is jointly registered or whether it is in the name of the Respondent.
45. The property was acquired during the subsistence of their marriage, and particularly in April, 2018. It is not clear whether their relationship had already deteriorated at the time the Respondent acquired the said property. However, it is clear that the Applicant instituted a case against the Respondent at the Children's Court in August 2018, four months later. For the lack of evidence to the contrary evidence, this Court presumes that their marital relationship had not broken down at the time of this purchase and that the Applicant offered the Respondent companionship and other non-monetary support.
46. Based on this analysis, I find that the property should be divided between the Applicant and the Respondent, on a 30:70 basis.

Motor Vehicle KDP XXX M

47. The parties herein agreed that the motor vehicle KDP XXXM was registered in the name of the Respondent, and that the registration happened after their divorce. However, the Applicant claimed a share of the same, claiming that the motor vehicle was purchased during the subsistence of their marriage but the Respondent withheld registration after their marriage broke down. She however did not attach any documentary evidence to support her claims that the motor vehicle was purchased during the subsistence of their marriage.



48. On the other hand, the Respondent produced a copy of sale agreement showing that he bought the said motor vehicle from Ramna International Motors Company Ltd. on 24th February, 2024. I have seen the said sale agreement. Based on this evidence, I find that the said motor vehicle was acquired by the Respondent after their divorce and hence does not form part of their matrimonial property. I find that the same belongs to the Respondent exclusively.

Motor Vehicle KDM XXXXX

49. The parties herein agreed that the motor vehicle KDM XXXX was registered in the name of the Respondent, and that the registration happened after their divorce. However, the Applicant claimed a share of the same, claiming that the vehicle was purchased during the subsistence of their marriage but the Respondent withheld registration after their marriage broke down. She however did not attach any documentary evidence to support her claims that the vehicle was purchased during the subsistence of their marriage.

50. On the other hand, the Respondent produced a copy of a sale agreement showing that he bought the motor vehicle from Canon Motors Ltd. on 8th July, 2023. The subject of the second sale was a motor vehicle whose description was (Type: Toyota Probox and Chassis No: NCP160-0019113). Going by the dates of the transaction, I make a factual finding that the motor vehicle was acquired by the Respondent after the divorce, and thus it does not constitute matrimonial property.

51. The Applicant claimed that the motor vehicle was purchased by income generated from Eagle Health and Clinic Services. She argued that the clinic is a family business as she invested millions of shillings in its inception and therefore any income generated therefrom is matrimonial property. However, she did not adduce evidence to show that the funds used to purchase the said motor vehicle were sourced from the Clinic. I find that the same belongs to the Respondent exclusively. Consequently, her claim for an interest in this motor vehicle fails.

Motor Vehicle KCB XXXX

52. The parties have little contention about this particular motor vehicle. The Respondent in his replying affidavit (at Para 10) accepted that the motor vehicle is jointly registered in their names and stated that he had no objection to the Applicant having the same. On the strength of his averment, I hereby find that the same should be given to the Applicant.

Motor Vehicle KAQ 154N and KAL 043P

53. The Applicant claimed that the 2 motor vehicles are jointly registered in her name and that of the Respondent. She produced a Registration Certificate for KAQ 154N dated 10th December, 2013 which indicated that the motor vehicle was jointly registered in their names. She did not provide any documentary evidence with respect to KAL 043P.

54. On the other hand, the Respondent did not make specific contestations on these two motor vehicles. He produced a Motor Vehicle Copy of Records for KAQ 154N showing that as at 4th March, 2025, the motor vehicle was registered jointly in his name and that of the Applicant. He also produced a Motor Vehicle Copy of Records for KAL 043P showing that as at 4th March, 2025, the motor vehicle was registered jointly in his name and that of the Applicant.

55. Based on the available evidence, and particularly on the strength of the two Motor Vehicle Copies of Records produced by the Respondent, I make a factual finding that the two motor vehicles are still



jointly registered in the names of the parties herein. I thus find that the two motor vehicles constitute matrimonial property within the meaning of Section 6 of the Matrimonial Properties Act.

56. The parties herein did not articulate their respective contributions direct financial contribution to the acquisition of the said motor vehicles. They did not provide this Court with their respective sale agreements to show how much was paid for them, and by whom. As a result, the Court finds that the two motor vehicles are to be shared between the Applicant and the Respondent on 50:50 basis.

Motor Vehicle KBE 099Y and KAP 196B

57. The Applicant claimed that the two motor vehicles are registered jointly in her name and that of the Respondent. She produced a Registration Certificate for KBE 099Y dated 10th December, 2013 which indicates that the motor vehicle was jointly registered in their names. She also produced a Registration Certificate for KAP 196B dated 10th December, 2013 which indicates that the motor vehicle was jointly registered in their names. She claimed that if the Respondent has sold the two vehicles, he did so illegally and without her consent and the proceeds thereof must be accounted for.
58. On the other hand, the Respondent claimed that the two motor vehicles were sold during the subsistence of their marriage long before separation, and they had long been transferred to the names of other parties, and as such do not constitute matrimonial property. He produced a Motor Vehicle Copy of Records for KBE 099Y showing that as at 4th March, 2025, the motor vehicle was registered in the name of one G.A.M. He also produced a Motor Vehicle Copy of Records for KAP XXXX showing that as at 4th March, 2025, the motor vehicle was registered in the name of one B.K.I.
59. From the evidence on record, it is clear that as at 10th December, 2013, the two vehicles were in the joint names of the parties herein. It is also clear that as at 4th March, 2025, the motor vehicles were registered in the names of other third parties. The copies of Motor Vehicle Copy of Records filed do not indicate when ownership changed from the joint ownership to the third parties. In these circumstances, this Court cannot tell with certainty the registration status of the two motor vehicles as at the time the Applicant filed the O.S. on 11th December, 2024.
60. The Applicant has already questioned the legality of the sale and transfer of the said motor vehicle to the third parties, arguing that she did not consent to the same. However, I am of the view that this Court may not be right forum to receive and address her grievances, and any questions around the legality of the sale and transfer of the said motor vehicles. She is at liberty to pursue the same in the right Court, and most likely at the lower Court.
61. In the end, I make a factual finding that the two motor vehicles are currently registered in the names of third parties and are thus not available for distribution under these proceedings.

Motor Vehicle KCV XXXXX

62. The Applicant claimed that the motor vehicle KCV 278H is still in the names of the Respondent and Kingdom Bank. She produced a Motor Vehicle Copy of Records showing that as at 11th December, 2024, the motor vehicle was registered in the joint names of the Respondent and Kingdom Bank.
63. On the other hand, the Respondent claimed that he has since sold the motor vehicle to one Joshua Odhiambo and as such it does not constitute matrimonial property. He produced a sale agreement showing that he sold the motor vehicle to the said Joshua Odhiambo on 17th August, 2023. The agreement is duly signed by the parties thereto. The Applicant claimed that the said sale agreement is a mere fabrication to defeat this suit, insisting that the motor vehicle is still in joint name of the Respondent and the Bank.



64. I have carefully considered the rival arguments concerning this particular motor vehicle. I note that the Applicant has not provided any evidence to show that the said sale agreement is a fabrication. I have also analyzed the contents of the sale agreement. The parties are easily identifiable, because it contains their full names, phone numbers, and ID numbers.
65. In my view, and based on the evidence placed before me, it is more likely than not that the sale took place, and that the motor vehicle belongs to a third party, who is not party to these proceedings. Thus, I find that the said motor vehicle does not form part of matrimonial property and cannot otherwise be available for division between the parties because it does not belong to any of the parties.

Motor Vehicle KCL 261H

66. The Applicant claimed that the motor vehicle KCL 261H was acquired during the subsistence of their marriage but registered in the name of the Respondent. On the other hand, the Respondent did not disclose when he acquired the said motor vehicle. He however produced a Motor Vehicle Copy of Records, showing that as at 11th December, 2024, the motor vehicle was registered in his name but charged to Kingdom Bank Limited. Thus, based on this information, it is not clear when exactly the Respondent acquired the said motor vehicle, whether it was during the subsistence of their marriage or after their divorce.
67. However, I note that the Respondent did not controvert the Applicant's claims that the said motor vehicle was acquired during the subsistence of their marriage. Consequently, in my view, it is more likely than not that the Respondent acquired the said motor vehicle during the subsistence of their marriage.
68. The said motor vehicle did not constitute matrimonial property because it was not jointly registered in the names of the parties herein. However, the Applicant can claim a share of the said vehicle under Section 9 of the Matrimonial Properties Act, under which a party can acquire interest in a property by contribution.
69. I also associate myself with the decision of the Court in the case of PWK Vs. JKG [2015] eKLR, where the Court said:
- “Where the disputed property is not so registered in the joint names of the spouses but is registered in the name of one spouse, the beneficial share of each spouse would ultimately depend on their proven respective proportion of financial contribution either direct or indirect towards the acquisition of the property. However, in cases where each spouse has made a substantial but unascertainable contribution, it may be equitable to apply the maxim equality in equity while needing the caution of Lord Pearson in *Gissing Vs. Gissing* [1970] 2 ALL ER. 780 Pg 788.”
70. Based on the above provision and the authority, it was upon the Applicant to show that she made contribution towards the improvement of the property. The Applicant did not claim to have directly offered money in the purchase. Her main claim was that the vehicle was purchased by income generated from Eagle Health and Clinic Services. She however did not substantiate her claims through documentary evidence to show that a part of the purchase price was sourced from the Clinic Business.
71. On the other hand, the Respondent did not disclose the source of the funds used to purchase the said motor vehicle. There was no sale agreement on record. He indeed did not agree nor deny whether the purchase price was sourced from the Clinic business or whether it was his own personal funds. He also did not disclose the nature of the charge with the Bank, the date of the charge, and the current



status of the loan. The much he said about this vehicle was that it is a tool of trade for Eagle Health and Clinic Services and is currently charged to Kingdom Bank Limited and as such, do not constitute matrimonial property.

72. The parties did not lead this Court on the exact date when the property was acquired. I will presume that the property was acquired before August, 2018, before their relationship broke down. This therefore means that the Respondent acquired it when there was still love for each and companionship. In my view, this means that it was more likely than not that the Applicant offered non-financial or non-monetary contribution to its acquisition. I therefore find that the same is to be shared between the two on 50:50 basis.

Motor Vehicle KDK XXXX

73. The Applicant claimed that the motor vehicle KDK XXXX was bought and registered on 9th November, 2022 during subsistence of their marriage. She however did not provide any documentary evidence to prove the claim. The Respondent disputed this, stating that the motor vehicle was brought after their divorce had been finalized on the 6th July, 2023. He therefore argued that the same does not constitute matrimonial property capable of distribution between them. He equally did not provide any documentary evidence to show that he acquired the same after their divorce. He did not provide a sale agreement for the said vehicle, or any other documentary evidence to back his claims.
74. In my view, it is more probable that the said vehicle was bought and registered on 9th November, 2022 during the subsistence of their marriage as alleged by the Applicant. This is primarily because nothing would have been easier for the Respondent than producing the copy of sale agreement for this motor vehicle or any other documentary evidence to show when he exactly purchased the said motor vehicle.
75. The said motor vehicle did not constitute matrimonial property because it was not jointly registered in the names of the parties herein. However, the Applicant can claim a share of the said vehicle under Section 9 of the Matrimonial Properties Act, under which a party can acquire interest in a property by contribution. The said provision states as follows;
9. Acquisition of interest in property by contribution
- 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.
76. Based on the above provision and the authority in PWK Vs. JKG [2015] eKLR, it was upon the Applicant to show that she made contribution towards the improvement of the property. The Applicant did not prove any direct financial contribution to its purchase.
77. I shall also determine whether she has provided evidence of non-financial or non-monetary contribution to the acquisition of the said vehicle. I note that at the time of the said purchase, the parties were not living together despite the absence of official court-backed separation orders. The Respondent claims that they stopped living under the same roof in 2018 and that they have remained the same ever since. I have also seen Court documents showing that the Applicant sued the Respondent at the Children Court at Eldoret on 8th August, 2018 over child custody and maintenance of their children.
78. In my view, this is a demonstration that, as at that date, the parties' relationship had seriously broken down that it would have been impossible for the two to make an arrangement to acquire the subject motor vehicle. For this reason, I find that it is more likely than not that the Applicant did not offer



financial and non-financial contribution to the purchase of the said vehicle. Her claim for any interest on the said vehicle this fails. I find that the same belongs to the Respondent exclusively.

Motor Vehicle KDJ XXXF

79. The Applicant claimed a share in the motor vehicle KDJ XXXF, arguing that the vehicle was purchased by income generated from Eagle Health and Clinic Services. She argued that the clinic is a family business as she invested millions of shillings in its inception and therefore any income generated therefrom is matrimonial property. The Respondent disputed this.
80. There is no dispute that the said motor vehicle was acquired during the subsistence of their marriage, but it is registered in the name of the Respondent. The Respondent produced a sale agreement showing that the Respondent bought this vehicle from Ramna International Motors Co. Limited on 4th August, 2022, which was during the subsistence of their marriage.
81. The said motor vehicle did not constitute matrimonial property because it was not jointly registered in the names of the parties herein. However, the Applicant can claim a share of the said vehicle under Section 9 of the Matrimonial Properties Act, under which a party can acquire interest in a property by contribution.
82. Based on the above provision and the decision of the Court in PWK Vs. JKG [2015] eKLR, (Supra), it was upon the Applicant to show that she made contribution towards the improvement of the property. Her main claim was that the vehicle was purchased by income generated from Eagle Health and Clinic Services. She however did not substantiate her claims through documentary evidence to show that a part of the purchase price was sourced from the Clinic Business. She also did not provide evidence of her non-financial or non-monetary contribution to the acquisition of the said vehicle.
83. I note that at the time of the said purchase, the parties were not living together despite the absence of official court-backed separation order. As I have already noted in the preceding paragraphs, there is evidence to show that as at August 2018, the parties' relationship had seriously broken down that it would have been impossible for the two to make an arrangement to acquire the subject motor vehicle. For this reason, I find that it is more likely than not that the Applicant did not offer financial and non-financial contribution to the purchase of the said vehicle.
84. The sale agreement shows that the Respondent paid the entire purchase price and that he got a financing facility from Kingdom Bank to the tune of Kshs.3,500,000/= . Based on this evidence, I am inclined to find that the purchase for this motor vehicle was financed solely by the Respondent. Thus, the Applicant's claim for any interest on the said vehicle fails. I find that the same belongs to the Respondent exclusively.

Motor Vehicle KBP XXXX

85. The Applicant claimed that the motor vehicle KBP XXXX was acquired during the subsistence of the marriage with her direct contribution, and the Respondent held it on behalf and in trust of the family. The Respondent disputed this, stating that he acquired the same from his own personal resources and the same does not thus constitute their matrimonial property.
86. The Applicant did not produce documentary evidence to show direct financial contribution to the purchase. Similarly, the Respondent did not produce evidence to show the purchase price for the motor vehicle and the portion of the purchase price that he paid. Without this information, and given that the parties agree that the vehicle was acquired during the subsistence of their marriage, I find



that it is just and equitable to share the motor vehicle on 50:50 basis between the Applicant and the Respondent.

Motor Cycle Registration Number XXXXXXXX

87. The Applicant claimed that the motor cycle Number XXXXXXXX is registered in the name of the Respondent and not in the name of Mark Holdings Ltd. She stated that the motor cycle was used for transportation of family goods, household needs and also animal products hence part of matrimonial property.
88. The Respondent disputed this and stated that he began the process of purchasing the same after their separation with the Applicant in 2018. He stated that he is yet to finalize the purchase and it is still registered in the name of the vender Mark Holdings Ltd and as such, does not constitute part of their matrimonial property. He produced a Registration Certificate for the said motor cycle dated 12th May, 2021, indicating that the registered owner was Mark Holdings Limited. I note that the said certificate was issued more than 4 years ago, and that the ownership status might have changed over the years.
89. However, this Court can only decide the matter on the basis of the available evidence and not on speculation. In my view, the Court has no option other than to rely on the registration certificate showing that the motor cycle is registered in the name of Mark Holdings Ltd. I therefore make a factual finding that, based on the available evidence, the motor cycle is registered in the name of a third party and is thus not available for distribution between the parties.

Business named Eagle Health and Clinic Services

90. The Applicant claimed that she is entitled to a share of the Business named Eagle Nursing Home, arguing that it is a family business that they jointly agreed to start. She averred that she contributed millions of shillings in monetary share to the Respondent to establish the business as a result of which the business was boosted and flourished. She produced copies of the Funds Transfer Application Forms for Kshs.1,300,000/=.
91. The Applicant stated that she took a loan to facilitate the installation of a lift in the building that hosts the Clinic, to meet the requirement for accreditation by NHIF. She claimed that she serviced the loan with her salary. She however did not provide documentary evidence to show the loan and the manner in which she serviced the same.
92. The Respondent denied this. He claimed that he was the brainchild of the business and that the same was not jointly established as a family business as alleged by the Applicant. He claimed that the business was registered in his name courtesy of him being the founder and a health professional as required by law.
93. Section 2 of the Matrimonial Properties Act defines family business as any business run for the benefit of the family by both spouses or either spouse and which generates income or other resources wholly or part of which are for the benefit of the family.

“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.”



94. The Respondent agreed that the Applicant transferred Kshs.1,300,000/= to him, but stated that the same was not her direct contribution to the establishment of the Clinic. He stated that the funds were a loan advanced by the Applicant and that he repaid the same in full in monthly instalment of Kshs.150,000/=. He stated that he actually refunded the Applicant Kshs.1,400,000/= which was in excess of the loan by Kshs.100,000/=. He however did not provide evidence of the said loan agreement between him and the Applicant.
95. I have seen the said bank statement. It shows that the Respondent transferred Kshs.50,000/= to the Applicant on the following occasions: 6/12/2019; 5/11/2019; 8/10/2019; 5/7/2019; 5/3/2019; 5/2/2019; 7/12/2018; 7/5/2018; 5/8/2016; 5/7/2016; 5/12/2016; 5/10/2016; 5/9/2016; 5/1/2017; 6/2/2017; 6/3/2017; 5/4/2017; 5/7/2017; 5/6/2017; 5/5/2017; 7/8/2017; 5/9/2017; 5/10/2017; 7/11/2017; 5/3/2018; 5/2/2018; 5/1/2018, and on 5/12/2017. The sum of these transactions is Kshs.1,400,000/=.
96. Concerning the Kshs.50,000/= transferred to her account periodically by the Respondent, the Applicant claimed that the monies were meant to cater for family needs since she had lost her job. She stated that, once she lost her job, they had agreed with the Respondent that he would be transferring Kshs.50,000/= from the hospital account to her account to cater for all the expenses she was handling with her salary, before she lost her job.
97. This Court is being invited to determine whether the Applicant made any financial contribution to the establishment of the said business. This issue requires the Court to determine whether the Kshs.1,300,000/= she paid to the Respondent was a friendly loan or whether it was her investment to the Clinic.
98. The parties did not tender sufficient evidence on this particular issue, for there were no written loan agreements on the same. However, this Court has nonetheless analyzed the transaction with a view to resolving this question. In my view, the periodic payments to the Applicant to the tune of Kshs.1,400,000/= is an indicator that the Respondent was repaying the funds advanced by the Applicant. His version of the narrative is more consistent than that of the Applicant.
99. On the other hand, the Applicant's version of the narrative is somehow contradictory. The evidence on record shows that the Applicant sued the Respondent for child maintenance on 8th August, 2018, wherein she claimed that the Respondent had abandoned his parental responsibility and sought monthly maintenance for Kshs.60,000/= against the Respondent. In those proceedings, however, she did not disclose to the Court that they had agreed with the Respondent that he would be paying her Kshs.50,000/= periodically to cater for the family expenses.
100. The bank statement also shows that the Respondent kept transferring the Kshs.50,000/= to the Applicant, before the initiation of the child maintenance case, during the period of the case, and even after the case had been decided. I note that even though the Court delivered a judgment on 5th April, 2019, and ordered him to pay Kshs.15,000/= monthly, the Respondent remained consistent with paying the Applicant Kshs.50,000/= and he did so on 6/12/2019; 5/11/2019; 8/10/2019, and 5/7/2019.
101. In my view, I find that it is more likely than not that the Respondent took a loan from the Applicant and that the Kshs.50,000/= periodic payments were made to repay the same. That explains why he kept paying even after the judgment of the lower Court and even after their marital relationship broke down. This also explains why the Applicant herself failed to disclose this arrangement to the lower Court.



102. In the end, I find that the Applicant failed to prove her contribution to the establishment of the Clinic. She also did not prove evidence that she was involved in the management of the Clinic Business. Her claim for a share of the same thus fails. I find that the same belongs to the Respondent exclusively.

Savings in Co-operative Bank account No. XXXXXXXXXXXXXXX

103. The Applicant claimed an equal share of the Savings in Co-operative Bank account No. XXXXXXXXXXXXXXX. The Respondent agreed that this is a joint account where each contributed. He argued that each of their contributions are verifiable and the same should be distributed in accordance to their respective contributions. I have seen a copy of the bank statement for the joint account. It shows that both parties were active in saving into the account as each can be seen making periodic deposits to the account.

104. There is also evidence that the parties would made significant withdrawals from the account from time to time. This Court presumes that the withdrawn cash went into enhancing the welfare of the family. For this reason, it may not be humanly possible to determine with mathematical precision how much belongs to either party. In these circumstances, I find that the amount held in the account should be shared equally between the parties herein.

Disposition

105. The Applicant's O.S succeeds partially.

106. These are the final orders:

- a. The following properties shall be shared equally between the parties: Parcel Title Number Bokoli/Kituni/XXXX, Motor Vehicles KAQ XXXX, KAL XXXX, KCL XXXX, KBP XXXX, and Savings in Co-operative Bank account No. XXXXXXXXXXXXXXX.
- b. Parcel Title Number E. Bukusu/N. Kanduyi/XXXX shall be divided between the Applicant and the Respondent in the ratio 30:70.
- c. The following properties belong to the Respondent Exclusively: Motor Vehicle KDP XXX M, KDM XXXXX, KDK XXXXX, KDJ XXXF, and Business named Eagle Health and Clinic Services.
- d. Motor Vehicle KCB XXX X shall go to the Applicant.
- e. Applicant's claim for the following properties has failed: Parcel Title Number Bokoli/Kituni/XXXX, Motor Vehicle KBE XXXX, KAP 196B, KCV XXXXX, and Motor Cycle Registration Number XXXXXXX.
- f. Each party to bear own costs.

107. Orders accordingly.

DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 24TH DAY OF SEPTEMBER, 2025.

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C. KENDAGOR

JUDGE

In the presence of:



Court Assistant: Beryl

Mr. Wanyinyi, Advocate for the Applicant

Mr. Khaemba, Advocate for the Respondent

