



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**WGH v TPAH (Civil Suit E045 of 2023) [2025] KEHC 13313 (KLR)
(Family) (26 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 13313 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
CIVIL SUIT E045 OF 2023
PM NYAUNDI, J
SEPTEMBER 26, 2025
IN THE MATTER OF THE LAND REGISTRATION ACT, 2012
IN THE MATTER OF SECTION 17 OF THE MATRIMONIAL PROPERTY ACT 2013**

BETWEEN

WGH PLAINTIFF

AND

TPAH DEFENDANT

JUDGMENT

1. Vide Amended Originating Summons dated 24th November 2023, WGH, the Plaintiff, seeks the following orders;
 1. That the Honourable Court be pleased to declare that the immovable property known as land No. Nairobi/ Block 101/ 240 and the developments thereon acquired by the joint efforts and funds of the Plaintiff and the Defendant during the marriage and registered in joint names of the parties be termed as matrimonial property.
 2. That this Honourable court be pleased to issue a declaration that the said property is jointly owned by the Plaintiff and the Defendant and the same should not be dealt with in a manner that seeks to illegally extinguish the Plaintiff's right of ownership over the suit property.
 3. That this Honourable Court declare that the suit property in Kitisuru, Kenya is immovable property that falls outside the geographical jurisdiction of the Swedish District Court and therefore the said court lacks jurisdiction to make any orders with respect to the suit property since it is situated in a foreign country.



4. That this Honourable Court recognizes that the original district Swedish Court lacks jurisdiction to apportion any rights over the matrimonial property located in Kitisuru, Kenya.
2. The Summons is premised on the grounds of the face of the application and supported by affidavit sworn by the plaintiff on 23rd March 2023. The Plaintiff avers that she and the defendant formalised their marriage on 17th July 1999 in Sweden. The Marriage was subsequently dissolved by order of the Swedish Divorce Court on 22nd April 2021. The property Nairobi/ Block 101/ 240 (Kitisuru Property) was acquired and developed during the pendency of the marriage. She is apprehensive that the defendant seeks to obtain orders before the Court in Sweden that would extinguish her right over the property.
3. In her witness statement dated 26th July 2024, the Plaintiff documents the highs and lows of the union between her and the defendant culminating in the recourse to Court to determine the respective rights of the parties. Her claim to a share of the matrimonial property is hinged on the sacrifice she says she made to shelve her career progression ambitions so as to mind the home front. She states that as she held fort at home taking care of the Children, the defendant was able to immerse himself fully into his career. It is her assertion that the agreement that the properties acquired in Nairobi were to ensure her financial security. In support of her claim she submits Certificate of Lease in respect of Nairobi/ Block 116/417 and Judgment of the Swedish Divorce District Court dated 30th November 2021.
4. In response to the Amended Originating Summons the defendant has filed Defence and Counterclaim dated 22nd January 2024. He admits that the marriage between the two was dissolved by the Order of the Swedish Court and that property Nairobi/ Block 101/ 240 was acquired during the pendency of the marriage and is registered in their joint names.
5. He asserts that the two acquired another property in Nairobi, namely an apartment block at Nairobi/ Block 116/ 417 (Zimmerman Property). In his Counterclaim, he submits to the jurisdiction of the Kenyan Court and seeks the division of the matrimonial property acquired in Kenya, that is the Kitisuru and Zimmerman properties. He seeks that the Plaintiff account for the rental income for both properties for the period she collected the rent solely, that is from July 2019 for the Zimmerman property and from December 2021 for the Kitisuru Property. He seeks that the two assets be sold and proceeds be shared on a 50:50 basis or in accordance to their respective financial contribution towards the acquisition.
6. In the alternative he submits that the plaintiff can retain the properties if she compensates him his share of the matrimonial properties based on valuation. In support of his claim he submits copy of bank statements and email correspondence demanding payment of his share of the rental income addressed to the plaintiff and the tenants of the properties.
7. The parties agreed to proceed by way of written submissions. The Submissions of the Plaintiff are dated 14th March 2025, while those of the Defendant are dated 30th April 2025.

Summary of Plaintiff's Submissions

8. The Plaintiff frames the following as the issues for determination-
 1. Whether the Plaintiff's monetary and non-monetary contributions, including time, career sacrifice and selfless dedication, warrant her a greater share in the division of the matrimonial property.
 2. Whether the Court can order the division of the matrimonial property between the parties while the sole purpose of the same being bought was for the retirement of the Plaintiff.



9. It is her assertion that the properties should not be divided between the parties as the properties were acquired on the understanding that they would constitute her retirement plan. The sale of the properties would prejudice her as she would be denied financial security, she is reliant on the rental income of the properties.
10. If, however the Court is inclined to divide the properties, then she is entitled to the lions share. It is her submission that the sacrifice made by her and her non-financial contribution was substantial. She relies on the Supreme Court decision in JOO v MBO [2020] eKLR and PNN v ZWN [2017] KECA 753 (KLR). She urges that the defendant has his pension and the assets in the other jurisdictions. Further reference is made to the decisions in VJC v BSW (Matrimonial Cause E002 of 2002) KEHC 688 (KLR) (2 February 2024) (Judgment) and in the English case of White v White [2001] 1 AC 596 and AWN v JGK [2021] KEHC (KLR) on the need to factor in her non-financial contribution.

Summary of Defendant's Submissions.

11. The defendant frames the issues for determination as follows-
 1. Whether the suit properties constitute matrimonial property?
 2. Whether the Plaintiff is entitled to declaratory reliefs sought in the Amended Originating Summons dated 24th November 2023?
 3. Whether the suit properties were acquired to secure the Plaintiff's retirement, as alleged by the Plaintiff?
 4. If not, whether the properties ought to be divided and if so, in what proportion?
12. The Defendant is emphatic that both the Zimmerman and Kitisuru properties, having been acquired during the pendency of the marriage and registered jointly in their joint names, are matrimonial property. Reference is made to the decision in T.M.W v F.M.C [2018] eKLR.
13. It is submitted that the declaratory orders sought by the plaintiff are superfluous as the properties are registered in the joint names of the parties and the defendant has submitted to the jurisdiction of the Kenyan Courts.
14. The claim by the Plaintiff, that the properties were acquired as a retirement package for her are dismissed as being as baseless and unsubstantiated and it is urged that the properties are matrimonial property and ought to be divided in accordance with Section 7 of the *Matrimonial Property Act*, 2013
15. On the entitlement of each of the parties, it is the defendant's assertion that he contributed more to the acquisition and development of the assets. That it is well established by judicial precedent that the non-financial contribution tends to weigh less than the financial contribution Decisions in VJC v BSW (Supra); PWG v JMK (Matrimonial Cause E 011 of 2022) [2024] KEHC 2072 (KLR) (Family)(28th February 2024)(Judgment) and MIEDB v JBN (Civil Suit E072 of 2021) [2024] KEHC 7993 (KLR) (Family) (14th June 2024) (Judgment) . He also relies on the decision in PNN v ZWN (Supra), JOO v MBO [2023] eKLR and EGM v BMM [2020] eKLR urging that each parties share be determined by their contribution.
16. In the alternative the Defendant submits that's the properties ought to be distributed equally between the parties and relies on the decisions in LNM v BNI [2021] eKLR; MNNN v ENK [2019] eKLR; BN v BK [2021] eKLR and WEE v AMO (Matrimonial Cause E006 of 2023) [2024] KEHC 2311 (KLR) (22 February 2024) (Judgment)



Analysis and Determination.

17. Having considered the pleadings herein, submissions on record and the relevant law I discern the issues for determination are:
 - i. Whether the suit properties constitute matrimonial property?
 - ii. Having regard to the respective contribution of the parties what is their rightful share?
 - iii. Is the defendant entitled to a share of the rental income? If affirmative, what share and for what period?
 - iv. What if any are the consequential orders the Court should make?
 - v. Who should pay costs?

Whether the suit properties are matrimonial properties.

18. Section 6 of the *Matrimonial Property Act* 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.
19. 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.
20. In the case of *T.M.V. vs 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.”
21. In the Ugandan High Court, Mwangusya J. in *PK vs. JM (Matrimonial Cause-2005/23)* [2006] UGHC 17 (18 May 2006) while citing *Bossa, J in JTKM vs. MGK (Divorce Appeal No. 135 of 1997)* (unreported) expressed himself as hereunder: -

On the last issue of whether the petitioner is entitled to matrimonial property, I clearly believe that she does and I so hold. Matrimonial property is understood differently by different people. There is always that property which the couple chose to call home. There may be property which may be acquired separately by each spouse before and after marriage. Then there is property which the husband may hold in trust for the clan. Each of these should in my view be considered differently. The property to which each spouse is entitled is that property which the parties choose to call home and which they jointly contribute to.
22. In this case the parties are agreed that the properties (Zimmerman and Kitisuru were acquired during the pendency of the marriage. I say agreed as the Plaintiff, did not file a response to the Counterclaim by the Defendant, the only available inference is that she does not contest it. I therefore hold that Nairobi/ Block 101/ 240 and Nairobi/ Block 116/ 417 are matrimonial property.



23. There is evidence that the payment for the properties was made out of an account held jointly by the two. It is to be inferred that both parties made contributions to the account as none of them claims to have been the sole contributor to that account.
24. The Plaintiff's claim that the properties were acquired as her retirement package must fail, first as no one can retire from home making but secondly and more importantly she did not adduce any evidence to that effect. In *Kengere v Aisha Motor Dealers Ltd & 2 others* [2025] KEHC 4798 (KLR) the Court restated the well-established rule of evidence requiring that a party relying on a factual position establish the existence of that fact citing the decision in High Court case of *Evans Nyakwana –vs- Cleophas Bwana Ongaro* [2015] eKLR where it was held that:
- As a general proposition the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. That is the purport of Section 107 (i) of the *Evidence Act*, Chapter 80 Laws of Kenya. Furthermore, the evidential burden...is cast upon any party, the burden of proving any particular fact which he desires the court to believe in its existence. That is captured in Section 109 and 112 of law that proof of that fact shall lie on any particular person...The appellant did not discharge that burden and as Section 108 of the *Evidence Act* provides the burden lies in that person who would fail if no evidence at all were given as either side.
25. Upon determining that the properties in question are matrimonial properties, the next issue for determination is the respective share of each of the parties.

Having regard to the respective contribution of the parties what is their rightful share?

26. The law governing division of matrimonial property is as expressed in *Constitution of Kenya, 2010* and the *Matrimonial Property Act*. Article 45(3) of *the Constitution* provides:
- 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.
27. The *Matrimonial Property Act* was enacted to give effect to the principle in Article 45(3) of *the Constitution*. Section 7 of the Act makes provision relating to ownership of matrimonial property 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.
28. Additionally, there are certain presumptions that may be made as to property acquired during marriage. Section 14 of the Act provides:
- 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.
29. Where there is joint registration, as in the instant case, a spouse is entitled to lead evidence to show that, in fact, the beneficial interest is not equal: that his/her contribution is such that, although the property was registered jointly, he/she was the owner of the property, or the contribution was much more than that of the other spouse. In other words, in the division of matrimonial property, contribution of



either spouse is the key consideration, as marriage does not interfere with the proprietary rights of an individual. The court, in each case, has to properly evaluate the evidence and determine the level of contribution of each spouse towards the acquisition and/ or the development of the matrimonial property in question.

30. In the case of *TMW – VS- FMC* [2018] eKLR the courts held as follows:-

As regards ownership of Matrimonial Property, Section 7 of the *Matrimonial Property Act*, states 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.

31. Similarly in the case of *GNK –VS MWNN* (Civil Appeal No. 559 of 2019, the Court of Appeal in finding that the presumption on equal contribution to a jointly owned property had been rebutted held that:-

The appellant was able to rebut the presumption that the properties which were jointly registered were equally owned.....”. The court went on to observe that:-“.....we do not understand why the Respondent wants to benefit from the hard earned labour of the Appellant

32. The parties herein are both posturing as being entitled to a larger share of the property. In the case of the Plaintiff she actually contends that the entire property vest in her as the Defendant has the advantage of a pension from United Nations. The defendant on his part argues that although the property is registered jointly in both their names, he has made substantial financial contribution to the same. He discounts the non- monetary contribution of the plaintiff and says at most it would not amount to more than 30 per cent and would definitely not entitle her to equal share at distribution.

33. It is a well settled principle that each case has to be considered on its own merits. The Court of Appeal stated as much in *TKM v SMW* [2020] eKLR:

We bear in mind the edict in *M v M* (2002) 1 EA 186, and many other decisions reminding the courts that in assessing the contribution of spouses in acquisition of matrimonial property, each case must be dealt with on the basis of its peculiar facts and circumstances but bearing in mind the principle of fairness.

34. Section 2 of the *Matrimonial Property Act* defines contribution thus:

In this Act, unless the context otherwise requires—

contribution” means monetary and non-monetary contribution and includes—

- (a) domestic work and management of the matrimonial home;
- (b) child care;
- (c) companionship;
- (d) management of family business or property; and
- (e) farm work

35. In the instant case the properties are registered in the joint names of the parties. Payment was made out of an account held in the joint names of the parties. For the duration of the marriage the defendant was in salaried employment, whereas soon after the parties got married, the plaintiff assumed the role of housewife. This is not to be equated to being unemployed as the duties that accompany it are recognised



as non- monetary contribution. The defendant in his demand for a share of the rental income was asking for 50 per cent. I find therefore that in the circumstances of this case the parties are entitled to an equal share of 50 per cent in both the matrimonial assets.

Is the defendant entitled to a share of the rental income? If affirmative, what share and for what period?

36. In his counterclaim, the defendant avers that they are both resident in Sweden and have therefore rented out both properties. Further that with regard to the Zimmerman property, the Plaintiff has been receiving the amount into her sole account since July 2019 and has been solely receiving the rental income for Kitisuru property since December 2021. Both averments are uncontroverted. I find therefore that the plaintiff should render accounts for the rent received by her for the period July 2019 to date for the Zimmerman property and December 2021 for the Kitisuru property.
37. I find further that the defendant is entitled to 50 per cent share of the net income collected in the period at paragraph 36 above for the two properties.

What if any are the consequential orders the Court should make?

38. The order obtained in the Swedish Divorce Cause has since been adopted in High Court of Kenya at Nairobi (Family Division) Miscellaneous Application No. E165 of 2013 WGH Vs TPAH, therefore pursuant to Section 7 of the *Matrimonial Property Act* and rule 30 of the matrimonial Property rules I find that principles of fairness will be achieved if the following orders are made
- i. Both assets viz Nairobi/ Block 101/ 240 and Nairobi/ Block 116/ 417 constitute matrimonial property, and each party is entitled to 50 per cent share.
 - ii. The defendant is entitled to 50 per cent share of the net rental income collected as stipulated in paragraphs 36 and 37 above.
 - iii. The two properties to be valued by a valuer jointly nominated by Counsel for the plaintiff and the defendants within 21 days from the date hereof. In the event that the Counsel are unable to agree on a valuer, the Counsel for the defendant shall nominate a valuer within 14 days of such failure. The Valuer so appointed will submit the report within 21 days.
 - iv. The fees for the valuer will be shared equally by the plaintiff and the defendant.
 - v. The property shall be sold within 120 days of submission of the valuation report and the net proceeds shared equally (factoring in the defendant's entitlement to the rental income and the professional fees consequent to the sale), provided that Plaintiff shall exercise her first right to purchase the properties by paying to the defendant his entitlement or making an offer acceptable to the defendant within the stipulated period of 120 days.
 - vi. For avoidance of doubt in default of the Plaintiff exercising her right to purchase the property, the same to be sold and proceeds shared as provided for under paragraph (v) above.
 - vii. To facilitate the valuation, sale and subsequent transfers/ transmission of the properties, each party will be required to execute the requisite documentation within 21 days of the documents being delivered to them. In the event a party fails to sign the required documentation the Deputy Registrar will execute the same in their stead.
 - viii. Owing to the relationship between the parties, each party will bear their own costs.
 - ix. Any party exercising their right to appeal to do so within 30 days.



It is so ordered.

**SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 26TH DAY OF SEPTEMBER,
2025.**

P M NYAUNDI

HIGH COURT JUDGE

In the presence of:

Fardosa Court Assistant

