



**DRL v AMN (Civil Suit 17 of 2018) [2025] KEHC 14063 (KLR) (8 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 14063 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CIVIL SUIT 17 OF 2018  
HM NYAGA, J  
OCTOBER 8, 2025**

**BETWEEN**

**DRL ..... PLAINTIFF**

**AND**

**AMN ..... DEFENDANT**

**JUDGMENT**

1. The plaintiff moved this court by way of an originating summons dated 9<sup>th</sup> May 2018, brought under Order 37 of the Civil Procedure Rules, Sections 1A and 1B of the *Civil Procedure Act* and Article 45(3) of *the Constitution*, seeking an equitable share of the matrimonial properties i.e. Land measuring 0.40 Ha, Bar home ground, Hotel, Lean insurance agency and Ksh. 1.5 million shillings held in Barclays Bank Account No. XXX.
2. The plaintiff urged the court to determine the following questions: -
  1. Whether the plaintiff and the defendant have been husband and wife.
  2. Whether the plaintiff is entitled to share equally or get whole share of all or part of the properties in the attached schedule of properties registered in the name of the defendant acquired during the subsistence of the plaintiff and defendant's marriage.
  3. Whether the plaintiff contributed wholly or partly to the acquisition of the properties attached in the schedule.
  4. Whether the defendant should forfeit his shares in the matrimonial property herein to the extent of the properties he has disposed without sharing proceeds with the plaintiff.
  5. What is the plaintiff's equal and equitable share in the marriage under Article 45(3) of *the Constitution* of Kenya?
  6. What is the order as to costs?



3. In the affidavit in support of the summons, he deponed that he got married to the defendant in 2006 but due to irreconcilable differences their marriage was dissolved in Nanyuki Divorce Cause No. 8 of 2015.
4. He averred that he is an Ex-Air Force having resigned in 2017 and that in the year 2004 while still serving in the military he was selected to go for peace keeping mission in Burundi which took him 13 months.
5. He contended that during that period he entrusted the defendant with his Barclays Bank ATM card to complete payment for a piece of land they had earlier made part payment for. However, upon his return to Kenya in 2005, he found that his account had only Ksh. 130,000/=.
6. It was his contention that he used to earn over one hundred thousand (100,000/=) per month and that when he asked the defendant where she took the money she could not account for the same.
7. He deposed that he got annoyed but forgave the defendant and in 2016 the defendant took the title deed and thereafter petitioned for a divorce.
8. He stated that during their marriage they acquired the following properties;
  - a. Land measuring 0.40 Ha. Worth over 10 million shillings.
  - b. Bar home ground worth over Ksh.600,000/=
  - c. Hotel worth over Ksh.400,000/=
  - d. Lean Insurance Agency worth over 2 million shillings.
  - e. Ksh. 1.5 million shillings held in Barclays Bank Account No. XXX.
9. He asserted that he is entitled to a share of the properties acquired during the subsistence of the marriage.
10. In opposition to the Application, the defendant swore a replying affidavit on 17<sup>th</sup> September,2018 wherein she deponed that the plaintiff never contributed towards the acquisition of Land Parcel No. Ontulili/ontulili/block 1 Katheri/1768 and she solely purchased the same from Agnes Mutindi Kimathi on 2<sup>nd</sup> January,2004.
11. She averred that at the time she purchased the said land the plaintiff was still in Kenya.
12. She contended that the plaintiff had left her with his Barclays Bank ATM card so that she could withdraw money and remit it to his first family in Maralal, Samburu, which she dutifully did.
13. She asserted that any additional money was used to settle the balance for the purchase of Motor Vehicle Registration Number KXN 222 Peugeot and to pay a debt owed to Barclays Bank.
14. With regard to Home Ground Bar and Hotel, she averred that the plaintiff sold the same before they parted ways and solely retained the proceeds thereof and as such the same should not be considered part of the matrimonial property.
15. Regarding Lean Insurance Agency, she stated she jointly owns it with Maria Ndinda Ndunda in equal partnership and that the plaintiff had no knowledge of its registration or operations.
16. She contended that the sum of Ksh 1.5 million held in Barclays Bank Account No. XXX should be equally shared between herself and the plaintiff.
17. It was her deposition that in the aforementioned Divorce Case the court decreed that Land Parcel No. Ontulili/ontulili/block 1 Katheri/1768 be shared equally between herself and the plaintiff, with the



portion on which she had constructed the house being reserved for her, and that the plaintiff did not appeal that decision.

18. She deposed that she contributed towards servicing and invested a lot of funds in Motor Vehicle Registration No. KXN 222 Peugeot 504 and thus she is entitled to a share in it.
19. She averred that plaintiff has not demonstrated that he contributed to the acquisition of Land Parcel No. Ontulili/ontulili/block 1 Katheri/1768 or LEAN Insurance Agency and he is thus not entitled to any share of the same.
20. She contended that the plaintiff's case is brought in bad faith as he has omitted the Maralal properties acquired during the subsistence of their union as part of the matrimonial properties.
21. She prayed that the plaintiff's claim be dismissed for being scandalous and an abuse of the court process.
22. The summons was heard through viva voce evidence.

### **Plaintiff's Case**

23. The Plaintiff adopted his statement filed on 7<sup>th</sup> February, 2020 as his evidence in chief wherein he stated that he met with the defendant in 1999 and that at then she had two sons i.e. Brian Ndunda and Mark Kusi, the elder being in class 3 and the younger in baby class.
24. He said he moved in with the defendant and rented a house at Thingithu estate in Nanyuki and that in 2006 he officially married her. It was his testimony that in 2003 he had bought a land from Agnes Kimathi but he did not fully pay for the same. He said he instructed Agnes that the defendant will be dealing with her directly since most of the time he was engaged at work.
25. He stated that similarly in 2003 he purchased a business by the name Home Ground Bar from one Kariuki who was his friend. He also stated that he had a car registration number KXN 222 Peugeot 504 and that in 2004, when he left for Burundi on a peacekeeping mission, he instructed the defendant to take care of both the children and the business.
26. It was his evidence that the defendant informed him that Agnes was insisting he settles the balance for the land or she would sell it to another person. Upon learning this, he sent his ATM card to the defendant to enable her clear the balance. He stated that he remained abroad for 13 months and upon his return in November 2005, he found that his account had only Kshs. 130,000/=. When he asked the defendant how the rest of the money had been spent, she was unable to account for it.
27. He believed the defendant's intention was to defraud him from the beginning. He further stated that the defendant registered the subject land in her name and hid the title at her mother's house claiming it was issued in 2012. He stated that she asked him for Kshs. 15,000 for the process, but when she later produced the title, he discovered it had actually been issued in 2007. He stated that in 2006, the defendant sold the bar and Morning star hotel without his knowledge and never gave him any money.
28. Regarding Lean Insurance Agency, he stated that the defendant connived with her sister, Maria Ndunda, to steal it from him. He said Lean is a short form of Lenaroto and Annah and urged the court to consider his case.
29. He stated that the defendant took advantage of him by draining his resources and leaving him with very little after he had provided for her children's upkeep, school fees and other needs. He questioned how she was able to acquire the properties given that, unlike him, she was not employed.
30. He urged the court to compel the defendant to pay him Ksh. 600,000/- for the bar, Ksh. 400,000/- for the Hotel, Ksh. 2 million for the insurance agency, Ksh. 1.2 million for his salary that she took from



his account with interest, Ksh 6 million for the upkeep of the children, school fees and other expenses incurred, and to hand over the land to him.

31. On cross-examination, he stated that he was the one who established Home Ground Bar in 2003, and that the defendant managed it while he was at work. He further testified that in September 2006, the defendant sold the bar but never shared any proceeds with him. However, when shown the transfer of funds, he confirmed that it reflected a payment of Ksh.100,000/= to him.
32. He testified that the defendant sold Morning Star Hotel to her friend in 2008. Regarding Lean Insurance Agency, he stated it was registered in the defendant's name in 2006, that he invested funds and furniture in it. He denied it was registered in the sisters' names and asserted that he was the one who sent the defendant's sister to register the business.
33. Regarding the aforementioned funds in the Barclays Bank, he said the same is currently closed and that he was the sole signatory. He said he sent money to the Defendant or business and to purchase the subject land. He confirmed that pursuant to a decree emanating from the Nanyuki case, the land was to be shared equally between him and the defendant, with the defendant taking the portion with the house. He also confirmed he did not appeal that case.
34. He added that he wanted reimbursement of the money he spent raising the children considering that they don't even call him.
35. PW2, Agnes Mutindi Kimathi, testified that she sold the land parcel no. 1301 to the parties and that the plaintiff, who had gone to work abroad, sent the purchase price through his wife.
36. During cross-examination, PW2 stated that she subdivided the land into parcel No. 1678 and transferred it to the parties. She could not confirm whether the funds came from the plaintiff. She confirmed that she received money from both parties.

### **Defendant's Case**

37. The defendant testified that she sells insurance policies. She relied on her replying affidavit dated 17<sup>th</sup> September, 2018 as her evidence in chief.
38. Regarding the subject land, she stated that pursuant to the decree issued by Nanyuki court, the land was to be shared equally between herself and the plaintiff, with her taking the portion that had the house. She told court that she subdivided the land into two parcels i.e. Nos. 2808 and 2809 and that both are registered in her name. She said she wants the plaintiff to vacate her portion and thereafter meet the costs of transferring his portion into his name.
39. She stated that Home Ground Bar and Morning Star Hotel went down, so they sold them and shared the proceeds with the plaintiff.
40. Regarding lean insurance, she stated that the same solely belongs to her.
41. During cross-examination, she stated that she purchased the subject land with her own money. She confirmed that she operated the plaintiff's bank account and used the funds to send money to his family and settle the loan he had on his said car. She also agreed that the plaintiff assisted in paying the children's school fees.

### **Submissions**

42. Only the Defendant's submissions are on record.



43. Regarding Land parcel No. Ontulili/ontulili/block 1 Katheri/1768, the defendant, citing Section 107 of the Evidence Act, submitted that it is trite that he who alleges must prove. She argued that the plaintiff did not produce any evidence to prove his financial contribution to the land and the house thereon. She contended that the plaintiff did in fact confirmed during the hearing in Nanyuki Divorce Cause No. 8 of 2015 that land was purchased by her and her sister and that he could not identify who built the house.
44. The defendant submitted that the sale agreement was between her and PW2, that the same was entered into while the plaintiff was in Kenya and that the land was subsequently transferred into her name.
45. She submitted that Article 45(3) does not equate equal rights to 50/50 sharing of assets but rather to the rights to be treated equally and fairly. In support of this proposition, she referred this court to Section 7 of the Matrimonial Property Act and the cases of Petition No. 10 of 2020 Joseph Ombogi Ongetoto v Martha Bosibori Ogentoto [2023] & JOO vs MBO (2023) KESC4 (KLR).
46. With respect to Home Ground Bar and Morning Star Hotel, the defendant submitted that the plaintiff failed to prove that she sold them and that in any case the same are non-existent for the court to make any determination regarding how they would be shared between the parties.
47. On Lean Insurance Agency, the defendant submitted that the property is registered in her and her sister's names and that the plaintiff's allegation that the registration was fraudulent is unsupported by cogent evidence. To buttress her submissions, she relied on the cases of Dennis Noel Mukhulo Ochwada & Another vs Elizabeth Murungari Njoroge & Another [2018] eKLR & Evans Otieno Nyakwana v Cleophas Bwana Ongaro [2015] eKLR for the proposition that allegations of fraud must be strictly proved and the standard of proof is more than a mere balance of probabilities.
48. Regarding Ksh. 1.5 million held in Barclays Bank Account No. XX, the defendant prayed that the same be shared equally between herself and the plaintiff.
49. With respect to Motor vehicle registration number KXN 222 Peugeot 504, the defendant submitted that she spent a lot of money servicing it and prayed that it be sold and the proceeds be shared equally between herself and the plaintiff or in the alternative, the plaintiff retains the same but pay 50% of the motor vehicle's value to her.
50. On who should bear the costs of the suit, the defendant relying on Section 27 of the Civil Procedure Act submitted that costs follow events. She argued that she has expended her resources immensely in defending this suit and therefore there are no reasons to deny her costs.

### **Analysis & Determination**

51. The Court has considered the Pleadings on record, the testimonies of the witnesses and the submissions on record. The issues for determination are: -
  - i. Whether the suit properties constitute matrimonial property.
  - ii. Whether the Plaintiff contributed towards acquisition and development of the properties.
  - iii. If the answer to the above is in the affirmative, how should the properties be divided?
  - iv. Whether the Plaintiff is entitled to the monetary claims sought against the Defendant.



## Whether the suit properties constitute matrimonial property

52. For a property to qualify as a matrimonial property, it must meet the definition under Section 6 of the Act. Section 6(1) of the Act provides that: -

### Meaning of matrimonial property

1. For the purposes of this Act, matrimonial property means—
  - 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

53. 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.”

54. Section 14 of the Act provides that:

“Where matrimonial property is acquired during marriage-

- a. In the name of one spouse, there shall be a rebuttable presumption that the property is held in trust for the other spouse; and
- b. In the names of the spouses jointly, there shall be rebuttable presumption that their beneficial interests in the matrimonial property are equal.”

55. According to Nyakundi J. in *T.M.V. vs F.M.C* (supra), the Court stated 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.”

56. According to the plaintiff land measuring 0.40 Ha, Home Ground Bar, a hotel, Lean Insurance Agency, and Ksh. 1.5 million held in Barclays Account No. 8059677 were acquired during the subsistence of his marriage to the defendant.

57. The Defendant did not controvert the above position save that she stated that Lean Insurance Agency is owned by herself and her sister, Maria Ndinda Ndunda as equal partners. She annexed a certificate of registration marked as AMN3 ascertaining this position. The plaintiff contended that the defendant, in collusion with her said sister, fraudulently dispossessed him of the property, but led no evidence to substantiate the claim. Guided by the above statutory provisions, I opine that this property is not matrimonial property.

58. Regarding Motor Vehicle Registration No. KXN 222 Peugeot 504, the defendant submitted that the plaintiff omitted it from the schedule of properties. The plaintiff, in his written statement, confirmed ownership of the vehicle. However, neither party adduced evidence to show whether the vehicle was acquired before or during the subsistence of the marriage. Accordingly, I find that there is no evidence that the property forms part of the matrimonial property.



59. From the foregoing, I only find that the subject Land, Home Ground Hotel and Ksh.1.5 million held in Barclays Bank were acquired by the parties during the subsistence of their marriage and they constitute matrimonial property.

### **Whether the Plaintiff contributed towards acquisition and development of the properties**

60. With respect to Land Parcel No. Ontulili/ontulili/block 1 Katheri/1768, I have considered the parties' testimony. The plaintiff testified that he purchased the land from PW2 and sent his Barclays Bank ATM card to the defendant to withdraw cash to settle the purchase price. The defendant confirmed that she operated the plaintiff's bank account, but only for purposes of sending money to his first family and settling the car loan he had taken. She annexed postal orders as Annexure AMN 2, confirming the first position but did not provide evidence showing the funds used to settle the car loan. The defendant adduced a sale agreement between her and PW2 but did not produce receipts evidencing the remittance of money for the purchase of the land. PW2, the seller, confirmed that she received money from both parties. In the circumstances, I find that both parties contributed to the acquisition of this land.
61. The plaintiff testified that he established Home Ground Bar and Morning Star Hotel and left them under the defendant's management when he went abroad. The plaintiff did not produce documents to substantiate his claim. The defendant, however, did not controvert this position and as such I find on a balance of probability that the plaintiff contributed to the acquisition of these businesses.
62. Regarding money held in Barclays Bank, the plaintiff stated that he is the sole signatory of the account. There is no evidence disputing that the funds belonged to him.

### **How should the properties be divided?**

63. Section 7 of the same Act stipulates that ownership of Matrimonial Property depends on each spouses' contribution to wit: -

“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”

64. The principle behind this is that division of matrimonial property between spouses is based on their respective contribution to the acquisition.
65. Section 2 of the Act defines contribution towards the acquisition of matrimonial property as:

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.



66. The Supreme Court holding in the case of JOO v MBO (supra) held that;
- “the guiding principle in determining whether Article 45 (3) conferred proprietary rights is that apportionment and division of matrimonial property may only be done where parties fulfil their obligation of proving what they are entitled to by way of contribution. The Court stated that, the status of the marriage does not solely entitle a spouse to a beneficial interest in the property registered in the name of the other, nor is the performance of domestic duties, or the fact that the wife was economical in spending on housekeeping. Therefore, a party must prove contribution to enable a Court to determine the percentage available to it at distribution. This safeguards a blanket expectation that the principle of equality will be applied generally in the division of matrimonial property, irrespective of contribution”.
67. The Court of Appeal in TKM v SMW [2020] eKLR stated as follows:
- “...We bear in mind the edict in Muthembwa v. Muthembwa (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...”
68. I have already held above that Lean Insurance Agency and Motor Vehicle Registration No. KXN 222 Peugeot 504 are not matrimonial properties and they are thus not available for distribution.
69. With regard to Home Ground Bar and Morning Star Hotel, the evidence on record shows that both have been sold to third parties and are therefore no longer available for distribution.
70. With respect to the subject land, both parties were in agreement that the Court in Nanyuki Divorce Cause No. 8 of 2015 decreed the land to be shared equally between them, with the defendant taking the portion with the house. The said decree is annexed in the defendant’s replying affidavit and marked as AMN’4.
71. The decree is dated 2<sup>nd</sup> August, 2017 and the lower court issued the following orders: -
1. The marriage between the petitioner and the Respondent is hereby dissolved.
  2. Land Parcel Number Ontulili/Ontulili Block 1(Katheri0/1768 be subdivided into two equal portions.
  3. Once the subdivision is completed, the Respondent will vacate the family home for occupation by the petitioner.
  4. The portion on which the family house stands be registered in the name of the petitioner and the remaining portion be registered in the name of the Respondent.
  5. In the alternative, the parties can agree to sell the land and share the proceeds equally.
72. The Plaintiff did not appeal the above decision and as such the same is binding on him. In the circumstances, this Court directs that the subject land shall be distributed in accordance with the decree of the lower court.
73. Concerning the funds allegedly held in the Barclays Bank account, the Plaintiff stated that he was the sole signatory to the account and further testified that the account has since been closed. No evidence has been placed before this Court to establish that any funds are still available for distribution. In addition, the Defendant has not demonstrated that she made any contribution or deposit into the



said account to establish a claim thereto. The Court will not issue orders in vain and consequently, no orders shall be made in respect of the alleged funds.

### **Whether the Plaintiff is entitled to the monetary claims sought against the Defendant**

74. The Plaintiff urged the court to compel the defendant to pay him Ksh. 600,000/- for the bar, Ksh. 400,000/- for the Hotel, Ksh. 2 million for the insurance agency, Ksh. 1.2 million for his salary that she took from his account with interest, Ksh 6 million for the upkeep of the children, school fees and other expenses incurred.

75. The Plaintiff bore the burden to prove the above allegation on a balance of probabilities. Section 107(1) & (2) of the Evidence Act Cap 80 Laws of Kenya provides that: -

“(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.”

76. Upon considering the totality of the evidence on record, I find that the Plaintiff did not place before this Court any concrete evidence to buttress his claims. No evidence was tendered to show that the Defendant solely sold the bar and the hotel and failed to share the proceeds with him. On the contrary, the Defendant explained that the businesses were underperforming and that they mutually agreed to dispose of them. The Plaintiff himself admitted during the hearing that he received Kshs. 100,000/- from the sale of the bar. In respect of the insurance agency, the Plaintiff did not demonstrate his stake therein noting that the business is registered in the names of the Defendant and her sister. As regards the alleged Kshs. 1.2 million withdrawn from his account, no documentary evidence such as bank statements or financial records was produced to substantiate the claim. A court cannot speculate or pluck figures from the air, nor embark on a fishing expedition to search for evidence that the Plaintiff was duty-bound to provide. In the absence of such evidence, his monetary claims remain unproven and cannot be sustained.

77. The upshot of the foregoing is that the summons is devoid of merit, save for the Land Parcel Number Ontuliki/Ontulili Block 1(Katheri)/1768, which I direct shall be shared in the manner decreed by the lower court.

78. There will be no orders as to costs.

79. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT MERU THIS 8<sup>TH</sup> DAY OF OCTOBER, 2025.**

**H. M. NYAGA**

**JUDGE**

In the presence of;

Meru Civil suit No. 17 of 2018(OS) Page 8 of 8

