



**SKN v AVM (Civil Suit 4 of 2019) [2025] KEHC 13656 (KLR) (Civ) (2 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 13656 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL SUIT 4 OF 2019**

**HK CHEMITEI, J**

**OCTOBER 2, 2025**

**BETWEEN**

**SKN ..... APPLICANT**

**AND**

**AVM ..... RESPONDENT**

**JUDGMENT**

1. The Applicant and the Respondent are estranged husband and wife. Their divorce proceedings went through and a decree nisi issued. The two were blessed with two issues who I believe are all adults now and possibly at tertiary institutions.
2. The Applicant filed this cause seeking the division of the matrimonial property as contained in the Originating Summons dated 25<sup>th</sup> January 2019.
3. The same contained various properties acquired during coverture and in the course of time they entered into a mediation settlement where they agreed on all the properties except the Karen property namely LR NO 13875/6. A consent dated 28<sup>th</sup> April 2022 was subsequently entered and they agreed that the court through a formal hearing was to settle the issue regarding the above Karen property.
4. Both testified relying majorly on their affidavits on record as well as the annexures to the same. They did not call any witnesses.
5. The Applicant claimed that he had contributed to the purchase and development of the property where they established a home in which as at the time of his testimony the Respondent stayed with the children who were currently schooling abroad.
6. The Applicant gave a chronology of how he contributed to its purchase where he said that he paid Kshs. 1million and the balance of about kshs.700,000 paid by the Respondent.



7. The Applicant further attached copies of bank statements and Mpesa transaction exhibiting the purchases of the building materials as well as the costs of labour and other incidentals.
8. He therefore prayed that he was entitled to 80% of the property based on his proven contribution.
9. The Respondent on the other hand relied as well on her sworn affidavits on record as well as the annexures thereto. She said that at the time of purchase and construction of the land and the home they were both working and salaried. She worked with Monsanto and the Applicant with AAR.
10. She further exhibited some bank statements showing how she borrowed some loan and utilize the same towards the building of the property. She denied that the Applicant was entitled to 80% or 95% of the property. She prayed that the property be divided equally
11. The court directed the parties to file their submissions which they have complied and the court has perused the same together with the cited authorities.
12. The thread running through the submissions and which the parties are in agreement is that the property is jointly registered as tenants in common in the names of both parties.
13. Secondly the amount of purchase consideration was about Kshs. 1.8 million and which the Applicant admitted he paid Kshs. 1 million and the balance including legal fees and stamp duty by the Respondent.
14. I think the point of departure comes on the contribution by each of the parties and specifically the development of the property.
15. It is also worthy noting that the development took some time and that the Applicant spent most of the time in Arusha, Tanzania where he worked and he would as he testified travelled most of the weekends.
16. The Respondent on the other hand while working for Monsanto would frequently travel but was generally involved in the supervision of the construction.
17. I have seen the receipts produced by each of the parties and in my view taking the totality of the same one can easily conclude that though they may not be mathematically equal each of them substantially contributed towards the development of the property.
18. For instance, the loans taken by the Respondent and paid to the Applicant's account in my view demonstrate to some extent her contribution. The same goes with the payment of other utilities like electricity rates and labour.
19. At the same time, it is not lost to note that the Applicant worked in Arusha Tanzania and although he said that he would come weekly and ordinarily leave the blank cheques with the Respondent, I find that generally speaking the Respondent managed the daily construction that took place.
20. On the same note she worked with Monsanto and I presume earned a salary which her counsel submitted at Kshs. 500,000 per month. Whichever way therefore her income must have contributed to the construction of the property just as the Applicant did.
21. There was no dispute as well that the Applicant left the cheques with the Respondent while away and she would utilize the same towards the payment of materials and other related expenses for the construction work.
22. Can this property be termed matrimonial and therefore align itself with the provisions of Section 6 of the Act? I respectfully think so. The parties registered it in their joint names and proceeded to develop



it during the subsistence of their marriage. They lived therein while the marriage existed and as at the time of testifying the Respondent was staying with the children in the premises.

23. I find therefore that the house built was matrimonial and that the Act at section 2 thereof clarifies that apart from monetary contribution it goes ahead to provide the other means in which a party may contribute. It goes on to state that:-

“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;

“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;

“Matrimonial home” means 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;

“Matrimonial property” has the meaning assigned to it in section 6;

“spouse” means a husband or a wife.

24. In view of the above I find that both parties equally contributed to the acquisition and development of the property and it is therefore a matrimonial property. The same shall therefore be shared equally or in other words on a 50:50 basis.
25. It is always not possible to have a precise mathematical figure pointing towards each person’s contribution in such a scenario. The parties while carrying out the construction exercise were not intending that one day each would be required to account for their respective contribution. If that was the case then the courts would have had it easier in arriving at a precision determination as it would easily involve accountants, valuers or such other persons endowed with numerical skills.
26. Nonetheless the whole idea is to as much as possible arrive at some reasonable contribution by each of the warring parties. In this case although one may not have contributed materially, the act of maintaining the home, the children and the usual chores is what the Act intended to be considered when sharing out matrimonial property. In essence one cannot be termed a weaker link in contributing to the family assets.



27. The Supreme Court in JOO V.MBO, FIDA (2023 eKLR) had this to say.

“These considerations are in line with the finding of the court in the English case of *White v White* [2001] 1 AC 596 where Lord Nicholls of Birkenhead held that the court should always ensure a fair outcome in considering the contribution of spouses by stating:

“Self-evidently, fairness requires the court to take into account all the circumstances of the case. Indeed, the statute so provides. It is also self-evident that the circumstances in which the statutory powers have to be exercised vary widely ... But there is one principle of universal application which can be stated with confidence. In seeking to achieve a fair outcome, there is no place for discrimination between husband and wife and their respective roles. Typically, a husband and wife share the activities of earning money, running their home and caring for their children. Traditionally, the husband earned the money, and the wife looked after the home and the children. This traditional division of labour is no longer the order of the day. Frequently both parents work. Sometimes it is the wife who is the money-earner, and the husband runs the home and cares for the children during the day. But whatever the division of labour chosen by the husband and wife, or forced upon them by circumstances, fairness requires that this should not prejudice or advantage either party when considering paragraph (f), relating to the parties' contribution.” This is implicit in the very language of paragraph (f): “the contributions which each ... has made or is likely ... to make to the welfare of the family, including any contribution by looking after the home or caring for the family.” If, in their different spheres, each contributed equally to the family, then in principle it matters not which of them earned the money and built up the assets. There should be no bias in favour of the money-earner and against the home-maker and the child-carer.”

28. The parties herein were already aware that they intended to have equal rights over the same even before they started developing and that is why they had a joint registration. That joint tenancy registration regime placed both of them on equal footing.
29. The best approach in the premises is for the parties to value the property vide a reputable estate agent to be agreed upon and thereafter buy each other out and in the event of any disagreement the same shall be sold in a public auction and the proceeds shared out equally. The above exercise shall be undertaken within 90 days from the date herein.
30. The court does not rule out of course the fact that just as they agreed in the mediation settlement they can still arrive at an amicable solution without prejudice to the above direction.
31. Since the other properties had been dealt with via the consent, I shall refrain from dealing with the same.
32. In the premises the court directs that:-
- (a) Land parcel Number 13875/6 together with the developments thereon shall be shared out between the Applicant and the Respondent equally and for avoidance of doubt 50:50 basis.
  - (b) The property shall be valued by a reputable valuer to be agreed by both parties and in the event of any disagreement the Deputy Registrar of this court shall be at liberty to choose one from the register of the registered valuers of Kenya.



- (c) The above exercise shall be undertaken within 90 days from the date herein and the costs of valuation shall be met equally by both parties.
- (d) Costs shall be in the cause.

**DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAIROBI THIS 2<sup>ND</sup> DAY OF OCTOBER 2025.**

**H K CHEMITEI**

**JUDGE**

