



REPUBLIC OF KENYA



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

**CKM v PMK (Matrimonial Cause E075 of 2022)
[2025] KEHC 15353 (KLR) (Family) (31 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 15353 (KLR)

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

FAMILY

MATRIMONIAL CAUSE E075 OF 2022

H NAMISI, J

OCTOBER 31, 2025

BETWEEN

CKM APPELLANT

AND

PMK RESPONDENT

JUDGMENT

1. The Applicant and Respondent entered into a Kikuyu customary marriage in 1997 and subsequently solemnized their union under the African Christian Marriage and Divorce Act (now repealed) on 15 January 2000, at [Particulars Withheld] Catholic Church in Thika. Their union was blessed with 3 children, who are now all adults. For a significant period, both parties were employed as teachers at [Particulars Withheld] High School, where they resided in a school house that served as their matrimonial home.
2. After years of marriage, the relationship between the parties unfortunately broke down. The Applicant petitioned for divorce in the Chief Magistrate's Court at Thika in Divorce Cause No. E004 of 2021. The marriage was formally dissolved upon the issuance of the decree Absolute on 7 April 2022.
3. Prior to these proceedings, the Applicant filed Nairobi High Court Civil Suit No 68 of 2015, seeking a declaration of her rights to the said properties. On 29 November 2019, the Hon. Lady Justice Ali Aroni delivered a comprehensive judgement in that matter. After considering the evidence from both parties, the learned Judge made a definitive finding that all 19 properties listed in the Applicant's suit were acquired during the coverture of the parties and, therefore, constituted matrimonial property. The decree issued on 19 December 2019 declared that the Applicant has a beneficial interest in each and every one of them, and the properties were declared to be matrimonial property. The judgement, having been delivered before the formal dissolution of the marriage, deferred the question of apportionment. The learned Judge also issued injunctive orders restraining either party from



alienating, disposing of, selling, charging or interfering in any of the said properties without the consent of the other spouse or a court order.

4. IN light of this prior judgement, the Court's present mandate is not to re-examine whether these assets are matrimonial, but to undertake the precise task that was left in abeyance: to determine the contribution of each spouse and, based on that determination, to make a just and equitable distribution.
5. By Amended Originating Summons dated 31 October 2024, the Applicant seeks the following orders:
 - i. That an order does issue declaring that 50% or such other higher proportion of the properties listed below and held jointly by the Applicant and the Respondent is for the beneficial interest of the Applicant.
 - a. L.R No. 84xx/x Thika Ngoigwa;
 - b. L.R No. 13xxx/xxx Juja;
 - c. Plot No. 6xx on L.R No. I|4xx/x Ndalani Mavoloni;
 - d. Juja.Kiaora Block/1xx/Kiaora Gachororo;
 - e. Plot No. xxPHASE x-Thika BIDCO;
 - f. Plot No. 1/1xxx Magogoni;
 - g. Plot No. xx Dandora;
 - h. Plot No. 1xxx/xxx-Ngoingwa;
 - i. Plot No. x/x||-Thika Kisii Estate;
 - j. Plot No. 1x/8xx-Thika Kisii Estate;
 - k. L.R. No. 20xxx1/2xx Kiganjo Estate Thika;
 - l. Plot No. 12xxx/33xxx Syokimau;
 - m. KBW xxxL Toyota S Wagon;
 - n. KBQ xxxQ Toyota S Wagon;
 - o. KBJ xxxN Toyota Salon;
 - p. KBL xxxF Toyota S Wagon;
 - q. KAU xxx Toyota S Wagon;
 - r. KAV xxx Toyota Station Wagon;
 - s. [Particulars Withheld] Micro-Finance Business;
 - ii. That the division to separate the interest in the properties be done within 90 days from the date of the judgment at the Respondent's cost;
 - iii. That the Respondent be ordered to transfer the Applicant's share in the properties to her within 60 days from the date of division;



- iv. That in default, the Registrar of the High Court of Kenya in Nairobi be authorized to sign any transfer documents in place of the Respondent or any other person holding any title on behalf of the Applicant to effect all the orders of this court in favor of the Applicant;
- v. That in the alternative, the said properties be sold and there be subdivision of the proceeds thereof;
- vi. That an order declaring the Respondent accountable to the Applicant in respect of all the income derived from the said properties;
- vii. That the costs of the summons be provided for.

The Applicant's Case

6. The Applicant case as presented through the Supporting and Supplementary Affidavits, as well as her witness statement and testimony in court, is that the acquisition of the family's substantial estate was a joint enterprise to which she contributed significantly in both monetary and non-monetary terms. She testified that as colleagues at [Particulars Withheld] High School, they worked together, taking loans and saving in various ways to acquire the properties in question.
7. The Appellant adduced a considerable volume of documentary evidence to substantiate her claim of direct financial contribution. This includes loan application forms from Mwalimu National SACCO and bank statements from Kenya Commercial Bank evidencing significant borrowing during the marriage. For instance, there was a loan of Kshs 60,000/= from Mwalimu SACCO dated 27 October 2000, which the Applicant avers was used for initial construction of rental houses on property LR. No. 13xxx/xxx in Juja. The Respondent was the guarantor for this loan.
8. There are several other loan forms from Mwalimu SACCO for the period 2001 – 2003, which the Applicant claims were taken to continue with construction projects and pay family expenses after the Respondent resigned from the Teachers Services Commission in 2001. There is a Kenya Commercial Bank Statement showing a loan of Kshs 550,000/- that was granted in January 2008. Another loan of Kshs 400,000/- from Mwalimu SACCO dated 1 August 2012, which the Applicant specifically claims was to aid in the development of property LR. No. 84xx/x in Ngoigwa.
9. The Applicant produced a bundle of official receipts from [Particulars Withheld] High School as proof that she was paying the rent for the house where the family resided. These payments span from 2006 to 2014. The Applicant's argument is that by shouldering this fundamental family expense, she liberated the Respondent's income, enabling him to channel his funds towards the acquisition and development of the properties.
10. Further, the Applicant testified extensively on her non-monetary contributions, which are recognised under section 2 of the *Matrimonial Property Act*. She stated that she gave birth to and raised their three children, having had custody of them throughout their childhood. She testified to performing the domestic duties including cooking, cleaning and managing the matrimonial home. The Applicant asserts that she was actively involved in the children's physical, spiritual, emotional and financial well-being throughout their marriage.
11. The Applicant claims she was a co-director in the micro-finance business known as [Particulars Withheld] Empowerment Program () at its inception and was responsible for running its office at Murathe Plaza before the Respondent allegedly altered the registration documents to exclude her.
12. The Applicant points to the long duration of the marriage, from 1997 to 2022, and the fact that they raised 3 children together as evidence of companionship. She also states that when the Respondent



resigned from his stable government job at the Teachers Service Commission in 2001, she supported the family and took on additional financial burdens to facilitate his ventures into the private sector and business.

13. In her rebuttal to the Respondent's claims, the Applicant strongly contested the Respondent's version of events. She denied that they separated in 2008, maintaining that the Respondent only left the matrimonial home in 2013. She also cast doubt on the Respondent's claim to have divorced her in 2019, pointing out that he was served with the divorce Petition in 2021 and did not raise any objection or inform the court of a pre-existing decree, which ultimately led to the Decree Absolute on 7 April 2022.

The Respondent's Case

14. The Respondent's case as presented in the Replying Affidavit, his evidence, and the evidence of DW2 and DW3, is founded on two principal assertions: (i) that the marriage effectively ended in 2008 when the parties separated; and (ii) that nearly all the properties in question were acquired after this separation through the Respondent's sole effort and with the contribution of his two subsequent partners, DW2 and DW3.
15. The Respondent's position is that the Applicant made no contribution whatsoever to the acquisition of the vast majority of properties. In his testimony, he stated that the Applicant never contributed a cent to what he has.
16. However, he concedes only one property, Plot No 3x in Thika (Bidco Area), which he confirmed was acquired jointly during their cohabitation and he claims to have already surrendered the same to the Applicant. The Respondent produced a letter dated 21 March 2011, addressed to Thika Mwalimu Land Buying Company in which he ceded his interest in the said plot to the Applicant.
17. The Respondent's primary argument is that the bulk of the properties were acquired after their alleged separation in 2008. He produced several Sale Agreement dated after 2008, including for Plot No. 2/0xx Thika Kisii Estate, Plot No. 1x within L.R. No. 15/8xx (16/xx/2010), Plot No. 6 within L.R. No. 84xx/x (1x/x/2011), and Ndalani/Mavoloni/Block 1/6xx (1x/x/2012). He claimed that properties Ndalani/Mavoloni/Block 1/6xx and L.R. No. 201xxx/xx were disposed of, while several motor vehicles were sold as scrap. Property Juja/Kiarora/Block/1xx is ancestral land, while Plot No. 12xxx/33xxx Syokimau belongs to Sunshine Teachers Group.
18. The Respondent states that the Applicant rarely cooked for him, rarely washed his clothes. In his view, bearing their 3 children did not amount to contribution. He stated, "This is not contribution. There was no love with her when getting those children. I just had to sleep with her".
19. The Respondent further testified that he was not aware of the various loans that the Applicant took to facilitate acquisition of the properties. In cross examination, the Respondent failed to produce any documentary evidence of his own to demonstrate his source of funds for the numerous properties acquired in his name.
20. A significant part of the Respondent's case involves his subsequent relationships. He testified that he entered into customary marriages with LM in 2009 and TW in 2010, while his Christian marriage to the Applicant was still legally subsisting. He has three children with each of these women. His two partners, DW2 and DW3, both testified that they are housewives and were aware that the Respondent was separated but not divorced when they met him. They claim to have supported him and witnessed the acquisition of some properties post-2008. The Respondent argues that these two women have a



greater claim to the properties than the Applicant, as the assets were acquired during the subsistence of his unions with them.

Analysis & Determination

21. I have carefully considered the pleadings, the evidence adduced by both parties and their respective submissions. The following issues lend themselves for determination:
 - i. Whether the Applicant made direct and indirect contributions, entitling her to a share thereof;
 - ii. The appropriate percentage share, if any, to which the Applicant is entitled in respect of the properties and the proceeds of properties sold
 - iii. Costs of the suit.
22. Before delving into the issues, I will address an argument raised by the Respondent. The Respondent has, in his defence, attempted to re-litigate issues that were conclusively determined in HC Civil Suit No. 68 of 2015. He has claimed that some properties were sold, that one is ancestral land, and that others were acquired solely by him after separation. These are essentially arguments that the said properties are not matrimonial property available for distribution.
23. The doctrine of res judicata, as encapsulated in Section 7 of the *Civil Procedure Act*, provides that no court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, and has been heard and finally decided by a competent court. A subset of this doctrine is issue estoppel, which prevents a party from re-litigating a specific issue that has already been determined.
24. In the case before me, the judgement of Hon. Lady Justice Ali Aroni was delivered by a court of competent jurisdiction. The parties were the same as in the present suit. The issue of whether the 19 properties were acquired during the subsistence of the marriage and, therefore, constituted matrimonial property was directly and substantially in issue. That issue was heard and finally decided in the affirmative. The Respondent's appeal against that decision was no successful.
25. Therefore, it is the finding of this Court that the issue of the status of the 19 properties as matrimonial property is res judicata. The Respondent's attempts to challenge the availability of these properties for distribution on the grounds of post-separation acquisition, sale, or third-party ownership are an abuse of the court process. The injunctive orders issued by Justice Ali Aroni specifically forbade the sale or alienation of these properties. Any purported sale in contravention of that order is illegal and does not extinguish the Applicant's beneficial interest, which was judicially declared. The only question lawfully before this Court is the one expressly left open by that judgment: the apportionment of these properties based on contribution.
26. Having said that, the resolution of disputes concerning matrimonial property is a sphere governed by a clear constitutional and statutory framework, illuminated by binding judicial precedent.
27. The foundational principle is found in Article 45(3) of the *Constitution*, which provides that 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. This constitutional guarantee of equality between spouses is the bedrock upon which the entire legislative framework is built.
28. The primary statute is the *Matrimonial Property Act*, in which several provisions are of cardinal importance.



29. Section 2 of the Act provides an expansive definition of "contribution" to mean both monetary and non-monetary contributions. It explicitly 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. This definition is a legislative recognition that the marital partnership is not merely a commercial enterprise but a union of shared responsibilities, where the value of domestic and caregiving work is legally equivalent to financial input.
30. Section 7 is the operative provision for distribution. It states

“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. This provision anchors the division of property firmly to the principle of contribution.
32. Section 9 addresses a specific scenario relevant to this case. It provides that where a spouse makes a contribution towards the improvement of property that is not matrimonial property (such as inherited or pre-marital property), that spouse acquires a beneficial interest in the property equal to the contribution made.
33. Section 14 establishes two critical rebuttable presumptions regarding property acquired during the marriage. Section 14(a) presumes that property acquired in the name of one spouse is held in trust for the other. Section 14(b) presumes that where property is acquired in the joint names of the spouses, their beneficial interests are equal.
34. The interpretation of this framework has been authoritatively settled by the Supreme Court in the landmark case of JOO -vs- MBO KESC 4 (KLR), in which the apex Court clarified several principles that are binding on this Court. The Court held that Article 45(3) of the *Constitution* guarantees equality of rights, but this does not translate to an automatic 50:50 division of matrimonial property. The division must be based on each party’s proven contribution. The Court emphasized that contribution must be interpreted broadly, giving significant and tangible weight to the non-monetary contributions listed in section 2 of the Act. The ultimate duty of the Court, therefore, is not to apply a rigid mathematical formula but to undertake a holistic and conscientious assessment of the parties’ entire marital relationship to arrive at a fair and equitable distribution on a case-by-case basis.

(i) Whether the Applicant made direct and indirect contributions, entitling her to a share thereof

35. It is my considered finding that the Applicant has discharged her burden of proof on a balance of probabilities. She has provided concrete, documentary evidence of her direct financial contributions through numerous loans taken over the years. Her stable income as a teacher provided a consistent financial resource for the family. The fact that she took loans in 2000, 2001-2003, 2008 and 2021, demonstrates a sustained pattern of financial engagement in the family’s investment activities throughout the marriage, both during cohabitation and after the alleged separation. Her payment of rent for the family home is also a significant financial contribution, as it freed up other family resources for investment.
36. Equally, the Applicant made non-monetary contribution. The Respondent’s attempt to belittle the Applicant’s roles is regrettable and contrary to the progressive spirit of our Constitution and the *Matrimonial Property Act*. Raising not one, not two, but three children from infancy to adulthood is a monumental contribution. Managing a home, providing a stable environment for the family, and offering companionship are not mere incidentals of marriage; they are recognised by law as



contributions that create a beneficial interest in the property acquired. As the Court of Appeal held in the seminal case of *Kivuitu -vs- Kivuiti* KLR 248, such services can be quantified to entitle a spouse to a share in the property. In the *JOO* case (*supra*), the Supreme Court reaffirmed this principle, stating that the Court must recognise and value such indirect contributions. The Applicant's testimony that she also managed the family business at its inception further solidifies her claim.

37. Regarding the Respondent's contribution, the Respondent is the registered owner of the properties. This is a significant contribution. However, he failed to provide any tangible evidence to support his claim that he acquired these properties through his sole effort. He did not produce bank statements, loan agreements or records of his business income to demonstrate the source of the funds used for these numerous acquisitions. His case is built on mere assertions. The law, under section 14 of the Act, creates a rebuttable presumption that where the property is acquired during the marriage in the name of one spouse, it is held in trust for the other spouse. The Respondent has failed to rebut this presumption. He has not shown that the Applicant did not contribute. On the contrary, the Applicant has shown that she did.
38. In view of the foregoing, it now falls to this Court to weigh the contributions of each party. This was a marriage of long duration, spanning from 1997 to 2022. Both parties were professionals who, for a significant period, earned salaries. The Applicant has proven a consistent pattern of both direct financial contribution through loans and indirect contribution by shouldering household expenses and performing the invaluable, legally recognised roles as a homemaker and mother. The Respondent, while being the primary acquirer in terms of registration, has failed to prove that this was a solo effort. The evidence points to a classic partnership where both spouses played their part in building the family's wealth. In such circumstances, where contributions are intertwined over many years and are both monetary and non-monetary, the principle of equality is the most equitable starting and ending point.
39. The Respondent's final line of defence is that his subsequent partners, LM and TW, have a greater claim to the properties acquired after 2008. This argument is legally flawed. The parties' marriage, solemnized in a Catholic Church, was a monogamous union governed by the *Marriage Act*. A party to a subsisting monogamous marriage lacks the legal capacity to contract any other form of marriage, including a customary one. Therefore, the Respondent's purported customary marriages to Ms. M and Ms. W in 2009 and 2010, respectively, were void ab initio. They were not wives in the legal sense and cannot, therefore, claim rights as spouses under the *Matrimonial Property Act*. Section 8 of the Act, which provides a framework for distributing property in polygamous unions, is wholly inapplicable. For all intents and purposes, the property regime applicable is that of a monogamous marriage, which subsisted until 2022.
40. This is not to say that Ms. M and Ms. W are without legal recourse. The law has evolved to recognize the rights of parties in long-term cohabitation arrangements. As the Supreme Court clarified in the case of *MNK -vs- PON KESC 9 (KLR)*, a cohabitee who has contributed to the acquisition of property may be entitled to a share based on the principles of constructive or resulting trusts. However, any such claim they may have lies against the Respondent personally and can only be satisfied from his share of the property after the division of the matrimonial estate with the Applicant. Their existence and any contributions they may have made cannot serve to diminish the Applicant's vested and legally protected rights as the sole legal wife during the entire period of the acquisition of the matrimonial property. To hold otherwise would be to allow the Respondent to defeat his legal wife's property rights through his own illicit actions, a position that would be contrary to public policy and the principles of equity.



(ii) The appropriate percentage share, if any, to which the Applicant is entitled in respect of the properties and the proceeds of properties sold

41. Based on the foregoing analysis of the parties' respective contributions, the Court makes the following orders on distribution, guided by the principles of fairness and equity:
- a. Plot No 3x Phase 5 Thika BIDCO: This is declared to be the absolute property of the Applicant. The Respondent is directed to execute all necessary documents to formally transfer the property to her name within 30 days.
 - b. L.R No. 84xx/x Thika Ngoigwa: The property is to be valued within 60 days. The Respondent shall have the first option to purchase the Applicant's 50% share at the market value. If he fails to exercise this option within 90 days of the valuation report, the property shall be sold and the net proceeds shared equally (50:50).
 - c. L.R No. 13xxx/xxx Juja (with rental units): The property is to be valued within 60 days. The property shall be sold and the net proceeds shared equally (50:50) between the parties.
 - d. Plot No. 604 on L.R No. 11xxx/x Ndalani Mavoloni: The Respondent having admitted to selling this property in contravention of a court order, is directed to pay the Applicant 50% of its market value as at the date of sale (2018). The value to be determined by the appointed valuer.
 - e. Juja/KIAORA/Block/1xx/Kiaora Gachororo, Plot No. 1/1xxx Magogoni, Plot No. xx Dandora and Plot No. 1x/8xx-Thika Kisii Estate: Properties to be valued within 60 days. The properties shall be sold and the net proceeds shared equally (50:50) between the parties.
 - f. Plot No. 1xxx/xxx-Ngoingwa and Plot No. 2/0xx-Thika Kisii Estate (Matrimonial Home): Properties to be valued within 60 days. The Respondent shall have the first option to purchase the Applicant's 50% share at the market value. If he fails to exercise this option within 90 days of the valuation report, the property shall be sold and the net proceeds shared equally (50:50).
 - g. L.R. No. 20xxx1/2xx Kiganjo Estate Thika: The Respondent having admitted to selling this property in contravention of a court order, is directed to pay the Applicant 50% of its market value as at the date of sale. The value to be determined by the appointed valuer.
 - h. Plot No. 12xxx/33xxx Syokimau: The Respondent having sold this property, is directed to account for the proceeds of sale, and 50% of the said proceeds shall be paid to the Applicant.
 - i. Motor Vehicle KBW xxxL Toyota S Wagon: The Respondent having disposed of this vehicle as scrap, he is ordered to account for the proceeds of sale, which shall be shared equally (50:50).
 - j. Motor Vehicle KBQ xxxQ Toyota S Wagon: Vehicle to be valued within 30 days. The Respondent shall pay the Applicant 50% of its current market value within 60 days of the valuation report.
 - k. Motor Vehicle KBJ xxxN Toyota Saloon: The Respondent having disposed of this vehicle, is ordered to account for the proceeds of sale, which shall be shared equally (50:50).
 - l. Motor Vehicle KBL xxxF Toyota S Wagon: Vehicle to be valued within 30 days. The Respondent shall pay the Applicant 50% of its current market value within 60 days of the valuation report.



- m. Motor Vehicle KAU xxx Toyota S Wagon: The vehicle having been written off, the Respondent is to account for any insurance compensation received, which shall be shared equally (50:50).
 - n. Motor Vehicle KAV xxx Toyota Station Wagon: The Respondent having caused this vehicle to be sold by public auction, is to account for any surplus proceeds after settlement of the debt, which shall be shared equally (50:50).
 - o. [Particulars Withheld] Empowerment Program Micro-Finance Business: The business shall be valued by a mutually agreed-upon certified public accountant within 60 days. The Respondent shall pay the Applicant 50% of the net asset value of the business within 90 days of the valuation report.
42. For clarity and avoidance of doubt, the final orders are as follows:
- i. A declaration is hereby issued that the Applicant and the Respondent are entitled to the 19 properties declared as matrimonial property in Nairobi HCCC No 68 of 2015 in equal shares, that is, in the ration 50:50;
 - ii. That the said matrimonial property shall be distributed between the Applicant and the Respondent in the manner set out in paragraph 41 hereinabove;
 - iii. That for purposes of executing these orders, where valuation is required, the parties shall within 30 days from the date hereof, agree on a single valuer. In default of agreement, the Deputy Registrar shall appoint a valuer. The costs of the valuation shall be shared equally between the parties.
 - iv. The valuations shall be conducted and the reports filed in Court within 60 days of the appointment of the valuer.
 - v. Where a property is to be sold, it shall be sold by private treaty upon a mutually agreed price, and in default of agreement within 90 days of the valuation report, the same shall be sold by public auction. The net proceeds thereof shall be divided equally between the Applicant and Respondent;
 - vi. The Respondent is hereby directed to render a full and accurate account of all income received from the rental properties and the micro-finance business from the date of the judgment in Nairobi HCCC No 68 of 2015 (28 November 2019) to date. 50% of the net income so determined shall be paid to the Applicant within ninety (90) days;
 - vii. Should the Respondent fail, refuse or neglect to sign any document necessary to effect these orders within 14 days of being requested to do so, the Deputy Registrar is hereby authorised and directed to sign all such transfer forms, sale agreements and other necessary documents on his behalf.
 - viii. Each party shall bear their own costs of this suit.

DATED AND DELIVERED AT NAIROBI THIS 31 DAY OF OCTOBER 2025

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

For Applicant : Mr. Mboha



For Respondent: Mr. Njoroge

Court Assistant: Lucy Mwangi

