



REPUBLIC OF KENYA



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

**PKR v AMR (Matrimonial Cause E009 of 2024)  
[2025] KEHC 15354 (KLR) (Family) (31 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 15354 (KLR)

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

**FAMILY**

**MATRIMONIAL CAUSE E009 OF 2024**

**H NAMISI, J**

**OCTOBER 31, 2025**

**BETWEEN**

**PKR ..... APPELLANT**

**AND**

**AMR ..... RESPONDENT**

**JUDGMENT**

1. The Applicant and Respondent were joined in holy matrimony on 7 October 1995 at the C.C.M Muthambi Parish in Tharaka Nithi. Their union subsisted for approximately 28 years, a period during which they were blessed with 4 children, now all adults. Regrettably, the marriage irretrievably broke down, leading to its formal dissolution by a decree absolute that was issued by the Chief Magistrate's Court at Milimani on 17 August 2023.
2. Throughout the subsistence of their marriage, both parties were in formal, gainful employment. The Applicant served as Secretary, initially at the Lands Office in Chuka and subsequently with the Judiciary in Nairobi, until her retirement in June 2021. The Respondent worked as a Journalist, including a tenure with the Parliamentary Service Commission, from which he also retired in 2021.
3. By Originating Summons dated 4 January 2024, the Applicant seeks the following orders:
  - i. This Honourable Court be pleased to issue a declaration that all the under listed properties which are registered in the name of the Respondent including Bank accounts jointly owned and/or individually operated by the Respondent are held beneficially and/or in trust for the Applicant:-
    - a) Magumoni/Itugururu/XXXX registered in the name of the Respondent;
    - b) Magumoni/Itugururu/XXX registered in the name of the Respondent;



- c) Magumoni/Itugururu/XXXX registered in the name of the Respondent;
  - d) Magumoni/Itugururu/XXX registered in the name of the Respondent;
  - e) Magumoni/Mwonge/XXXX registered in the name of the Respondent;
  - f) Nairobi /Block XXX/XXX registered in the name of the Respondent and the Applicant;
  - g) KJD/Kitengela/XXXXXX registered in the name of the Respondent;
  - h) Magumoni/Itugururu/XXXX registered in the name of the Respondent;
  - i) Alepol Engineering and Co;
  - j) Alepol Trails & Travel Limited
- (ii) Whether the Applicant and the Respondent during the substance of the marriage used and applied their income unsparingly towards acquisition and development of their acquired matrimonial property and homes;
    - ii. An order do issue declaring that the Respondent is accountable to the Applicant in respect of all income derived from the said properties and should give an account of monies in receipt by him;
    - iii. An order do issue that the Respondent be restrained from disposing of the aforesaid properties pending the determination of this suit;
    - iv. An order do issue declaring that 50% of such other or higher portions of such other or higher portions of the property aforesaid are held by the Respondent in trust and for the beneficial interest of the Applicant;
    - v. The costs of this summons be provided for.
4. The application is predicated upon the Applicant's Supporting Affidavit sworn on 4 January 2024, a Further Affidavit sworn on 12 April 2024, and oral evidence adduced during the hearing. The Respondent opposed the application through a Replying Affidavit, a Supplementary Affidavit sworn on 4 January 2025, and his oral testimony before this Court. It is common ground that all the properties listed in the Originating Summons, which form the subject matter of this dispute, were acquired during the subsistence of this long-standing marriage.

### **The Applicant's Case**

- 5. The Applicant's case is that she is entitled to 50% share of all properties acquired during the marriage. She grounds her claim on the assertion of having made substantial contributions, both direct and indirectly, and both monetary and non-monetary, to the acquisition and development of the family's portfolio of assets.
- 6. In respect of her monetary contributions, the Applicant testified that she contributed half of the Kshs 200,000/= purchase price for the property known as Nairobi/Block XXX/XXX in 2003. She stated that these funds were sourced from a loan obtained from her SACCO, Sheria SACCO. She explained her inability to produce documentary evidence for this specific transaction by stating that both her bank and SACCO were unable to retrieve records dating back over 10 years due to changes in their software and record-keeping policies.



7. To substantiate her general pattern of financial contribution, the Applicant produced voluminous statements from Shera SACCO and KCB Bank, demonstrating a consistent history of taking out development loans and other credit facilities throughout the marriage. She contends that these funds were consistently channelled towards family investments, property development and general upkeep.
8. The Applicant provided specific evidence of certain direct financial injections. She adduced a Sale Agreement dated 28 January 2020, showing the disposal of her personal, pre-marital property, Kiirua/Naari/XXXX, for a sum of Kshs 725,000/-. She further produced a bank deposit slip dated 29 January 2020, evidencing a payment of Kshs 255,000/- from the sale proceeds into a bank account of Alepol Trails and Travel Ltd, a company where both she and the Respondent are co-directors and shareholders.
9. Furthermore, the Applicant pointed to a transfer of Kshs 638,939/= from her SACCO account on 14 March 2013. This transfer occurred just two days before the Respondent entered into a Sale Agreement for the purchase of motor vehicle KBT 416S on 16 March 2013, for which a deposit of Kshs 580,000/= was required. The Applicant invites this Court to draw the inference that her funds constituted the deposit for this vehicle. She also testified that another company vehicle, registration KCE XXXX, was used as part of the consideration for the purchase of the property known as Magumoni/Itgururu/XXX.
10. Beyond these direct financial contributions, the Applicant underscored her immense non-monetary contribution over the 28 year marriage. She testified that she was the primary caregiver for their 4 children, managing their upbringing and education. She managed the matrimonial homes in Nairobi and Chuka and performed all attendant domestic duties. She posits that this contribution, as recognised by the law, created a conducive and stable environment that freed the Respondent to focus on his career and investment activities, thereby directly facilitating the acquisition of the properties in dispute.

### **The Respondent's Case**

11. The Respondent presents a starkly different narrative. His central contention is that he was the sole financial architect of the family's wealth. He asserts that the properties were acquired and developed exclusively through his own efforts, funded by his salary and a series of substantial loans he personally secured. He contends that the Applicant's role was that of a passive beneficiary, making only minimal and indirect contribution.
12. The Respondent specifically denies that the Applicant made any financial contribution towards the Kshs 200,000/= purchase price for the Nairobi property in 2003, challenging her to provide proof, which she could not. He argues that any funds she may have deposited into the company accounts, such as the Kshs 255,000/= were for the operational expenses of the businesses and not for capital acquisition.
13. To buttress his claim of being the primary financier, the Respondent produced documentary evidence of various loans he took from Barclays Bank, KCB Bank and Bunge SACCO. Most significantly, he adduced evidence of Kshs 8 million mortgage facility from his employer, the Parliamentary Service Commission, which he states was used for the construction of seven rental units on the Nairobi property. He further testified that upon his retirement, he was compelled to surrender kshs 1.7 million of his pension benefit to service the outstanding balance on this loan.
14. Regarding the specific properties, for Nairobi/Block XXX/XXX, the Respondent admits that the property is registered in their joint names. However, he testified that he added the Applicant's name to the title willingly, without any financial consideration from her, only to later believe this was part



of a well orchestrated scheme, in anticipation of the divorce and these proceedings. He proposes that the property be divided in the ration 80:20 in his favor.

15. For Magumoni/Itugururu/XXX, the Respondent asserts that this parcel is ancestral land which he inherited from the estate of his late father, M'Rithi M'Magana, through High Court Succession Cause No. 466 of 2009. He produced a confirmed Grant to this effect. He contends that as inherited property, it does not form part of the matrimonial estate and is not subject to division.
16. The Respondent admitted having sold some properties during the subsistence of their marriage. These include KJD/Kitengela/XXXXX and Magumoni/ITUGURUR/XXXX. The Respondent justified these disposals stating that the proceeds were utilized to meet pressing family needs, including the payment of school fees for their children up to university level. This assertion was vehemently disputed by the Applicant, who testified that their children's education timelines do not align with the dates of the sales and that the Applicant did not received any proceeds from the sales.
17. With respect to the companies, Alepol Engineering & co and Alepol Trails and Travel Ltd, the Respondent states that these are now dormant and hold no assets. He specifically testified that one of the company vehicles, KCE XXXX, was repossessed by a creditor, Mwananchi Credit Ltd, due to a defaulted loan, and produced a repossession order to that effect. This claim, however, was directly contradicted by the Applicant's evidence showing that the very vehicle was used as consideration in the acquisition of land parcel Magumoni/Itgururu/XXX.

### **Analysis & Determination**

18. 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 listed properties constitute matrimonial property;
  - ii. Whether the Applicant made direct and indirect contributions, entitling her to a share thereof;
  - iii. The appropriate percentage share, if any, to which the Applicant is entitled in respect of the properties and the proceeds of properties sold
  - iv. Costs of the suit.
19. The resolution of disputes concerning matrimonial property is a sphere governed by a clear constitutional and statutory framework, illuminated by binding judicial precedent.
20. 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.
21. The primary statute is the *Matrimonial Property Act*, in which several provisions are of cardinal importance.
22. 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.
23. Section 6 defines "matrimonial property" as the matrimonial home(s), household goods, and any other property jointly owned and acquired during the marriage. Crucially, it excludes property acquired or inherited before the marriage, as well as trust property.
24. 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."
25. This provision anchors the division of property firmly to the principle of contribution.
26. 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.
27. 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.
28. 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.

### **Whether the listed properties constitute matrimonial property**

29. Applying the foregoing principles to the evidence on record, I now address the issue of which properties constitute the matrimonial properties.
30. Property known as Nairobi/Block XXX/XXX was acquired in 2003, during the subsistence of the marriage, and served as the parties' matrimonial home in Nairobi. It is registered in their joint names. It, therefore, falls squarely within the definition of matrimonial property under section 6(1)(a) and (c) of the Act. It is available for distribution.
31. In respect of property known as Magumoni/Itugururu/XXX, the Respondent has provided uncontroverted evidence, in the form of a Confirmed Grant from Succession Cause No. 466 of 2009, that he inherited this parcel of land from his late father. As inheritance, the land itself is excluded from the definition of matrimonial property under section 6 of the Act. However, the Applicant's evidence is that the parties jointly undertook developments on this bare land, constructing a habitable home



where they resided when in Chuka, and where her household items remain to this day. This scenario directly engages section 9 of the Act, which provides that a spouse acquires a beneficial interest in non-matrimonial property through contributions to its improvement. Therefore, while the land itself is the Respondent's separate property, the developments thereon, having been constructed through the parties' joint efforts during the marriage, form part of the matrimonial property and are subject to division.

32. With respect to the companies, the Respondent holds 500 shares in Alepol Trails & Travel Ltd, while the Applicant hold 100 shares. Both are directors in the Company. The Respondent's attempts to dismiss these companies as dormant and asset-less is not borne out by the evidence. The Applicant produced a signed acknowledgment receipt dated 24 August 2018, which explicitly states that motor vehicle KCE XXXX, registered to Alepol Trails & Travel Ltd, was used as party-payment of Kshs 650,000/= towards the purchase of property known as Magumoni/Itugururu/XXX. This demonstrates that the company was not a mere shell but was actively used as a vehicle for acquiring and transacting family assets. In such circumstances, where a corporate entity is used as an alter ego of the spouses to hold family assets, the Court is entitled to lift the corporate veil to do justice. The Court of Appeal in *GKW v RNK KECA 1475* affirmed that shares and assets held in companies can be treated as part of the matrimonial estate, stating that "clever paperwork cannot erase a spouse's beneficial interests." Accordingly, this Court finds that the shares held by the parties in both companies are matrimonial property, and the value they represent is available for distribution.
33. Regarding the properties sold before these proceedings, it is admitted by both parties that several properties, including KJD/Kitengela/XXXXX, Magumoni/Itugururu/XXXX, Magumoni/Itugururu/XXXX and Magumoni/Itugururu/XXX, were sold by the Respondent during the marriage but before the institution of these proceedings. As these properties are no longer in the possession or ownership of the parties, this Court cannot make orders for their direct division. However, these assets were unequivocally matrimonial property at the time of their disposal. Section 12 prohibits the alienation of an interest in matrimonial property during a monogamous marriage without the consent of both spouses. The Respondent's unilateral disposal of these assets without the Applicant's consent or accounting for the proceeds was a breach of her proprietary rights. His explanation that the funds were used for school fees is a bare assertion unsupported by any documentary evidence and is disputed by the Applicant. In the absence of a satisfactory account, the Court is entitled to find that the proceeds of sale were matrimonial funds that have been dissipated by the Respondent. The Court has a duty in equity to remedy this. The value of the Applicant's share in these dissipated assets can be "clawed back" by making compensatory adjustment or a set-off during the division of the remaining, existing assets.

#### **Whether the Applicant made direct and indirect contributions, entitling her to a share thereof**

34. The Applicant has, on a balance of probabilities, proven her case as a significant contributor. Her evidence of long and uninterrupted employment, her history of taking loans from her SACCO, and the specific instances of contributing proceeds from the sale of her own land and making a timely transfer for a vehicle deposit, all point to a substantial and consistent direct monetary contribution. Her non-monetary constitution over a 28-year marriage is, in the words of the Supreme Court in *JOO -vs- MBO* (supra), invaluable. By raising 4 children to adulthood and managing the domestic sphere, she provided the foundational support and stability that enabled the Respondent to pursue his career and investment activities. This is not a secondary or lesser contribution; it is a co-equal pillar of the marital relationship.



35. The Respondent's monetary contributions are also undeniable and well-documented. He was clearly a primary financial provider and took on significant debt to acquire and develop the family's assets. The Court acknowledges his hard work and financial acumen.
36. However, the Respondent's attempt to portray himself as the sole architect of the family's wealth while relegating the Applicant to a non-contributing party is untenable in law and contrary to the evidence. This was a joint enterprise, a partnership of equals as envisioned by Article 45(3) of *The Constitution*. The Respondent provided a significant portion of the documented capital, while the Applicant provided a blend of her own direct capital and the equally crucial, though less easily quantifiable, non-monetary foundation upon which the family's fortunes were built.

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

37. Based on the foregoing analysis of the property pool and the parties' respective contributions, the Court makes the following orders on distribution, guided by the principles of fairness and equity:
  - a. Nairobi/Block XXX/XXX: This property is registered in the joint names of the Applicant and the Respondent. Section 14(b) of the Act creates a rebuttable presumption that their beneficial interests are equal. The Respondent has attempted to rebut this presumption by alleging a "scheme" on the part of the Applicant, but has offered no credible evidence to support this claim. It is a bare, self-serving assertion made in the heat of litigation. Given the Applicant's substantial direct and indirect contributions to the family's welfare and assets over nearly three decades, the Court finds no reason to displace the presumption of equality. A division of 50:50 is just and equitable.
  - b. Magumoni/Itugururu/XXX (Developments): The Applicant has established a beneficial interest in the improvements made on this ancestral land under Section 9 of the Act. In the absence of specific receipts detailing the exact financial input from each party for the construction, the Court must make an assessment based on equity, recognizing the Applicant's non-monetary contribution and the likelihood of her financial input into the joint family kitty from which such projects were funded. The Court awards the Applicant a share of 30% of the assessed value of the developments on the said land.
  - c. Companies (Alepol Engineering & Co. and Alepol Trails & Travel Ltd): Having lifted the corporate veil, the Court finds that the shares in these companies are matrimonial property. The shareholding structure of 500 for the Respondent and 100 for the Applicant in Alepol Trails and Travel Limited does not, in the context of a family company, reflect the true beneficial ownership, which is a product of their joint marital efforts. The shares in both companies shall be divided equally (50:50).
  - d. Set-off for Sold Properties (KJD/Kitengela/XXXXX, Magumoni/Itugururu/XXXX, Magumoni/Itugururu/XXXX, Magumoni/Itugururu/XXX and Magumoni/Itugururu/XXXX): The Respondent has failed to account for the proceeds from the sale of several matrimonial properties. The Court finds that the Applicant was entitled to a 50% share of these proceeds. The Respondent is hereby ordered to account for the said proceeds. In default of a satisfactory account, the value of the Applicant's share shall be determined upon valuation of the sold properties at the time of sale, and this sum shall be treated as a debt owed by the Respondent to the Applicant. This amount shall be set off from the Respondent's share of the proceeds from the sale of the Nairobi property, or be paid to her as a lump sum.



38. For clarity and avoidance of doubt, the final orders are as follows:

- i. A declaration is hereby issued that the properties and assets listed the in prayer 1 of the Originating Summons constitute matrimonial property;
- ii. That the said matrimonial property shall be distributed between the Applicant and the Respondent in the manner set out in paragraph 37 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. 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 : Mrs. Katee h/b Mr. Mosioma

For Respondent: Mr. Akenga

Court Assistant: Lucy Mwangi

