



**Mahamed v Ali (Environment and Land Case E269 of 2022)
[2025] KEELC 7670 (KLR) (6 November 2025) (Judgment)**

Neutral citation: [2025] KEELC 7670 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E269 OF 2022
MN KULLOW, J
NOVEMBER 6, 2025**

BETWEEN

AMINA MAHAMED PLAINTIFF

AND

HUSSEIN SHEIKH ADEN ALI DEFENDANT

JUDGMENT

A. Introduction/background

1. The Plaintiff commenced this suit by way of a Complaint dated 17th August 2022, accompanied by a Verifying Affidavit sworn on the same date. In the Complaint, she avers that she is the lawful wife of the Defendant and that, in or about 2009, while residing and working in the United Kingdom, she funded the purchase of a truck in London at £30,000 and later remitted USD 50,000 through Abdurizak (Abdi Risak) Osman Jibril for fit-out and related expenses received in Kenya by Adan Maalim (Macalin) Nur.
2. She pleads that the truck was sold and the proceeds utilized by the Defendant to acquire House No. 41, Amana Estate, South C, Nairobi, contrary to the parties' agreement that it be registered in her name; instead, it was registered solely in the Defendant's name. She further pleads that the Defendant thereafter collected rent from House No. 41 and used the proceeds to purchase House No. 32, Amana Estate, South C and Flats Nos. 8F9 and 8F10 at Ibragoi Plaza, Eastleigh, Nairobi, which he also registered in his name and from which he has continued to collect rent to her exclusion.
3. The Plaintiff thus seeks the following reliefs as pleaded:
 - a. An order of permanent injunction restraining the Defendant, by himself, agents, representatives, servants and/or any other person authorized by him, from selling, dealing, interfering, alienating or disposing of House No. 41 and House No. 32, both at Amana Estate, South C, Nairobi, and Flat Nos. 8F9 and 8F10 of Ibragoi Plaza;



- b. An order directing that the Registrar expunge the Defendant's name from the properties being House No. 41 and House No. 32 (Amana Estate, South C, Nairobi) and Flats 8F9 and 8F10 (Ibragoi Plaza) and register the Plaintiff, Amina Mohamed Yusuf, as the legitimate owner of the properties;
 - c. Special damages totaling KShs. 32,490,000 particularized as:
 - i. House No. 41 (Amana Estate): KShs. 120,000 p.m. for 14 years (2009–2022) = KShs. 20,160,000;
 - ii. House No. 32 (Amana Estate): KShs. 75,000 p.m. for 1 year 2 months (Nov 2011–2022) = KShs. 10,050,000;
 - iii. Flat 8F9 (Ibragoi): KShs. 65,000 p.m. for 2 years = KShs. 1,140,000;
 - iv. Flat 8F10 (Ibragoi): KShs. 65,000 p.m. for 2 years = KShs. 1,140,000;
 - v. Subtotal: KShs. 2,280,000; Grand Total: KShs. 32,490,000;
 - d. General damages;
 - e. Costs of the suit; and
 - f. Any other relief the Court may deem fit.
4. Together with the Plaint, the Plaintiff filed a List of Witnesses dated 17th August 2022, witness statements, and a List and Bundle of Documents. She subsequently filed a Supplementary List and Bundle of Documents dated 17th August 2022 (pages 14–37 of the Plaintiff's Trial Bundle).

Defence Pleadings

5. Upon service of the Plaint and Summons to Enter Appearance, the Defendant entered appearance and filed a Statement of Defence dated 16th January 2023. He denies that the Plaintiff funded the acquisition of any of the properties, avers that he acquired them from his own income and savings over many years of employment, and states that rental income sustains his two families (his first wife Hidai Siyad Duale and their four children, and the Plaintiff and their nine children) and also caters for his cancer treatment.
6. He pleads that he was under no legal obligation to register any property jointly with the Plaintiff, and he puts the Plaintiff to strict proof of the alleged funding. The Defendant filed a List of Witnesses (naming himself) and a List and Bundle of Documents dated 16th January 2013 comprising, inter alia, Title No. Nairobi/Block 103/683 (House 41), Title No. Nairobi/Block 103/692 (House 32), Flat 8F9 and 8F10 on L.R. No. 36/VII/369 (Ibragoi Plaza), revenue and employment records, and medical reports.

Mediation

5. The matter was referred to Court-Annexed Mediation under Ref. MLM/MED/695/2024. By a Mediator's Report dated 11th September 2024, the mediator recorded that no mutual consensus was reached. The mediation having failed, the cause was returned to this Court for hearing.

Hearing

6. The hearing commenced on 6th May 2025. PW1 – Amina Mohamed Yusuf adopted her witness statement, List and Bundle of Documents, and her Supplementary List and Bundle, all of which were produced and marked as Plaintiff's Exhibits. In brief, PW1 testified that in 2009 she purchased



a truck in London for £30,000 and remitted USD 50,000 through Abdirizak Osman Jibril to Kenya for installation of a petroleum tank; that the truck was sold upon arrival and the proceeds applied by the Defendant to acquire House No. 41, Amana Estate, South C; that despite an agreement for registration in her name, the house was registered solely in the Defendant's name; and that the Defendant subsequently collected rent from House 41 and acquired House No. 32 and Flats 8F9 & 8F10 (Ibragoi Plaza), also in his name.

7. On cross-examination, she maintained that the funds were exclusively hers and that the Defendant had no employment at the material time. On re-examination, she reiterated reliance on her statement and documents and sought recognition of her ownership—particularly of House No. 41.
8. PW2 – Mr. Adani Maalim Noor adopted his witness statement. He testified that he assisted the parties in London with procurement of a truck; that the Plaintiff paid £30,000 for the truck and later remitted further monies for importation/fit-out; that after shipment to Kenya the truck was sold and the Defendant indicated he would purchase a house at Amana Estate for the Plaintiff; and that the said house was House No. 41, Amana Estate, South C. He was cross-examined and maintained that the Plaintiff funded the transaction.
9. PW3 – Mr. Abdirizak Osman Jibril adopted his witness statement testified that, on 15th July 2009, he received £37,000 in cash from the Plaintiff and remitted approximately USD 51,000 via Dahabshiil (Southall) to the Defendant in Kenya, expressly for the purchase of a house at Amana Estate, South C. He was cross-examined and maintained that the funds were the Plaintiff's.
10. PW4 – Mr. Ali Mohamed Muhudin adopted his witness statement. He testified that in November 2009 he received £5,000 from the Plaintiff and remitted the same through Kaah Express (Harlesden) to the Defendant for the purpose of purchasing a house in Kenya. On cross-examination, he confirmed he acted purely on the Plaintiff's instructions. The Plaintiff's case was closed on 12th May 2025.
11. The Defendant testified as DW1, adopting his witness statement and producing his List and Bundle of Documents (2023), including titles for Nairobi/Block 103/683 (House 41), Nairobi/Block 103/692 (House 32), Flat Nos. 8F9 & 8F10 on L.R. No. 36/VII/369, revenue/employment records, and medical report.
12. He stated that he had been employed for many years and that the properties were acquired through his income and savings; that rental income supports his two families and defrays cancer treatment costs; and that the Plaintiff made no contribution toward any purchase. On cross-examination, he acknowledged receiving remittances from the Plaintiff but contended they were for family upkeep, not property acquisition. After re-examination, the Defence closed its case.

B. Submissions By The Parties

13. The Plaintiff, through the firm of Bare & Associates Advocates LLP, filed written submissions in support of her Plaint dated 17th August 2022. She reiterated that she solely financed the purchase of House No. 41, Amana Estate, South C (Nairobi/Block 103/683) using funds remitted from the United Kingdom in 2009, being £30,000 and USD 50,000 which were initially used to acquire and outfit a petroleum truck. The Plaintiff submitted that the truck was later sold and the proceeds applied by the Defendant towards the purchase of the said property, contrary to their understanding that it would be registered in her name.
14. It was further argued that rental income derived from House No. 41 was subsequently used to acquire House No. 32 (Nairobi/Block 103/692) and Flats Nos. 8F9 and 8F10 (Ibragoi Plaza, Eastleigh), which the Defendant registered in his sole name. She maintained that the Defendant produced no



evidence of employment or financial means capable of funding the purchases. In law, the Plaintiff placed reliance upon Sections 25(2), 26, 28(b) and 80 of the *Land Registration Act*, 2012, Sections 6, 7, and 9 of the *Matrimonial Property Act*, 2013, and Section 107 of the *Evidence Act*, contending that she had established both a resulting and constructive trust. She cited the decisions in MNK - Vs- POM [2023] KESC 2 (KLR), Shah & 7 Others -Vs- Mombasa Bricks & Tiles Ltd & 5 Others [2023] KESC 106 (KLR), and Munguti & 6 Others v Zibu & 13 Others [2023] KESC 49 (KLR), as well as the earlier authority of Twalib Hatayan & Another -Vs- Said Saggar Ahmed Al-Heidy & 5 Others [2015] eKLR, all of which affirm the equitable principle that a party who provides the purchase consideration acquires a beneficial interest notwithstanding registration. It was her further submission that the Defendant's title was therefore subject to a trust within the meaning of Section 28(b) of the *Land Registration Act* and that the register should be rectified under Section 80. She urged the Court to draw an adverse inference from the Defendant's failure to produce any evidence of income and to find that the property was wholly financed by her.

15. The Defendant, through MMW & Company Advocates LLP, filed written submissions dated 29th July 2025. He argued that the suit properties were acquired during a subsisting polygamous marriage and therefore constitute matrimonial property within the meaning of Section 6(1) of the *Matrimonial Property Act*. Counsel submitted that while the Court may issue declarations of rights, it lacks jurisdiction to divide or transfer property between spouses during the continuance of a marriage, as provided under Section 7 of the Act.
16. Reliance was placed on SJM -Vs- MK (Matrimonial Cause No. 4 of 2020) [2023] KEHC 24355 (KLR), AKK -Vs- PKW [2020] eKLR, and PNN v ZWN [2017] eKLR, which held that division of matrimonial property can only follow dissolution of marriage. On the merits, it was contended that the Plaintiff failed to discharge her evidential burden of proof, as the alleged remittances were for family upkeep and no proof of the truck sale or subsequent tracing of rental proceeds was furnished. The Defendant relied on Bwire -Vs- Wayo & Sailoki [2022] KEHC 7 (KLR) and Mbuthia Macharia -Vs- Annah Mutua Notiviga & Another on the shifting burden of proof, submitting that the Plaintiff's case rests on conjecture. He urged that the prayers for injunction, rectification, and damages be dismissed as unproven and prejudicial to his other dependents.

C. Issues For Determination

17. Upon considering the pleadings, the evidence, and the parties' submissions, the Court finds that the following issues arise for determination:
 - a. Whether this Court has jurisdiction to determine the dispute
 - b. Whether the Plaintiff has proved, on a balance of probabilities, that she solely financed the purchase of House No. 41, Amana Estate, South C (Nairobi/Block 103/683), thereby acquiring a beneficial interest, and whether that interest extends to the other properties.
 - c. Whether the Plaintiff is entitled to the reliefs sought in the Plaint dated 17th August 2022

D. Analysis and Determination

Issue No. 1 – Whether this Court has jurisdiction to determine the dispute

18. The Defendant contended that the properties in dispute constitute matrimonial property and that this Court therefore lacks jurisdiction to interfere with their ownership or registration during a subsisting marriage. It was his submission that under Section 7 of the *Matrimonial Property Act*, 2013, matrimonial property can only be divided after dissolution of marriage. Reliance was placed on SJM -



Vs- MK (Matrimonial Cause No. 4 of 2020) [2023] KEHC 24355 (KLR), where the Court held that: “By virtue of Section 7, this Court cannot divide matrimonial property between spouses until their divorce or their marriage is otherwise dissolved.”

19. Counsel also cited AKK -Vs- PKW [2020] eKLR, in which the Court of Appeal observed that: “A plain reading of section 17 enables a spouse, subsistence of a marriage notwithstanding to make an application for declaratory orders”
20. The Plaintiff, on the other hand, submitted that the dispute before this Court is not one of matrimonial property, but of ownership and trust under the *Land Registration Act*, 2012. She argued that House No. 41, Amana Estate, South C (Nairobi/Block 103/683) was acquired solely from her own funds remitted from the United Kingdom in 2009, and therefore never became matrimonial property within the meaning of Section 6(1) of the *Matrimonial Property Act*.
21. It was her position that the Defendant’s registration of the house in his name was a breach of trust, and that this Court, as a court of law and equity under Article 162(2)(b) of *the Constitution* and Section 13 of the *Environment and Land Court Act*, is seized of jurisdiction to inquire into ownership of land, determine whether a trust exists, and order rectification of the register pursuant to Sections 25(2), 26, 28(b) and 80 of the *Land Registration Act*. Counsel further relied on Article 45(3) of *the Constitution*, which guarantees spouses equal rights during marriage, and Article 159(2)(d), which directs the Court to administer substantive justice without undue regard to procedural technicalities.
22. This Court has carefully considered the pleadings, evidence, and authorities cited. It is clear that the Plaintiff does not invite the Court to divide matrimonial property; rather, she asserts that House No. 41 was her personal acquisition and therefore falls outside the matrimonial regime. In that context, the applicable law is not Section 7 of the *Matrimonial Property Act* but the *Land Registration Act*, which empowers this Court to declare and enforce equitable and beneficial ownership in land. As was held in *Twalib Hatayan & Another -Vs- Said Saggat Ahmed Al-Heidy & 5 Others* [2015] eKLR,
23. Guided by that authority, this Court finds that it possesses full jurisdiction to determine questions of ownership and trust in relation to House No. 41, Amana Estate, and any other properties alleged to have been acquired through the Plaintiff’s funds. The question before the Court is therefore not the division of matrimonial property but the ascertainment of true ownership and whether the Defendant holds any property in trust for the Plaintiff. Accordingly, the Court holds that the objection on jurisdiction fails. The matter properly falls within the competence of this Court under Article 162(2) (b) of *the Constitution*, Section 13 of the *Environment and Land Court Act*, and Sections 25(2) and 80 of the *Land Registration Act*.

Issue No. 2 – Whether the Plaintiff has proved, on a balance of probabilities, that she solely financed the purchase of House No. 41, Amana Estate, South C (Nairobi/Block 103/683), thereby acquiring a beneficial interest, and whether that interest extends to the other properties

24. The Plaintiff’s case is that in the year 2009, while residing and working in the United Kingdom, she purchased a truck at a cost of £30,000, and subsequently sent USD 50,000 through one Abdirizak Osman Jibril to Kenya for purposes of converting the truck into a petroleum delivery vehicle. The evidence of PW2, Adani Maalim Noor, confirmed that he received the said funds from the Plaintiff and facilitated the purchase and shipment of the truck to Kenya. Upon its arrival, it was sold for approximately KShs. 7,000,000, and, according to the Plaintiff, the proceeds were used by the Defendant to acquire House No. 41, Amana Estate, South C. Both PW3, Abdirizak Osman Jibril, and PW4, Ali Mohamed Muhudin, corroborated this account, testifying that they remitted funds from the United Kingdom directly to the Defendant or his agents at the Plaintiff’s instruction.



25. The Plaintiff also produced documentary evidence, including remittance slips, correspondence from the Relief Organization in the UK, and an affidavit allegedly signed by the Defendant in 2009, acknowledging that House No. 41 was to belong to the Plaintiff and their children.
26. In cross-examination, the Plaintiff maintained that at the material time the Defendant was unemployed and that all the funds emanated from her personal savings and allowances she received for caring for her autistic child in the United Kingdom. The Defendant, in his testimony, denied that the Plaintiff funded the purchase and insisted that he was in gainful employment and purchased the house from his savings.
27. However, he produced no payslips, bank statements, tax records, or evidence of remittance to substantiate any income or employment during the material period. The only documents he placed before Court were title deeds and a sale agreement showing him as the purchaser, but without any clear indication of the source of funds. The Court observes that mere registration of title, though prima facie evidence of ownership under Section 26(1) of the *Land Registration Act*, is not conclusive where it is shown that registration was obtained through fraud, misrepresentation, or where the title is subject to a trust under Sections 25(2) and 28(b) of the same Act.
28. In the present case, the Plaintiff's evidence was clear, consistent, and corroborated by three independent witnesses. The Defendant's denial was not supported by any credible proof of independent financial means. This Court therefore accepts the Plaintiff's account as truthful and finds that the funds used to purchase House No. 41, Amana Estate, South C originated from the Plaintiff. By operation of law, the Defendant holds the said property in trust for the Plaintiff.
29. The principles in *Twalib Hatayan & Another -Vs- Said Saggar Ahmed Al-Heidy & 5 Others* [2015] eKLR and *Munguti & 6 Others -Vs- Zibu & 13 Others* [2023] KESC 49 (KLR) are applicable: a resulting trust arises automatically where one party advances the purchase price, even if title is registered in another's name, while a constructive trust arises to prevent unjust enrichment where conduct shows a common intention inconsistent with sole ownership. Applying those principles, the Court finds that House No. 41 was wholly funded by the Plaintiff and does not form part of matrimonial property.
30. Regarding the other properties, namely House No. 32, Amana Estate (Nairobi/Block 103/692) and Flats Nos. 8F9 and 8F10 at Ibragoi Plaza, the Plaintiff alleged that they were acquired from rental income derived from House No. 41. However, no documentary evidence such as bank statements, rent ledgers, or sale agreements was produced to demonstrate a direct link between the proceeds of House No. 41 and the subsequent purchases. While the Plaintiff's narrative may be plausible, the Court is bound by the standard of proof in civil cases, namely, proof on a balance of probabilities. In the absence of cogent evidence tracing the funds, the Court cannot infer a resulting or constructive trust over the subsequent properties. The claim in respect of those properties therefore fails.

Issue No. 3 – Whether the Plaintiff is entitled to the reliefs sought in the Plaint dated 17th August 2022

31. Having found that the Plaintiff has proved her claim in respect of House No. 41, Amana Estate, South C (Nairobi/Block 103/683), and that the said property was acquired solely through her funds, the Court now turns to determine the appropriate reliefs. The Plaintiff seeks, inter alia, a permanent injunction restraining the Defendant from dealing with the suit properties, an order directing the Registrar of Lands to expunge the Defendant's name from the titles and register the properties in her name, special damages of KShs. 32,490,000 for lost rent, general damages, and costs.



32. On the first limb, having found that the Plaintiff solely funded the purchase of House No. 41, this Court is satisfied that the Defendant holds the said property in trust for the Plaintiff. Pursuant to Sections 25(2), 28(b), and 80(1) of the *Land Registration Act*, 2012, a registered title may be rectified where it is established that registration was obtained or retained in breach of trust. The Court therefore issues a declaration that the Plaintiff, Amina Mohamed Yusuf, is the lawful and absolute owner of House No. 41, Amana Estate, South C (Nairobi/Block 103/683). The Chief Land Registrar is hereby directed to cancel the Defendant's name on the register and to register the said property in the name of the Plaintiff, Amina Mohamed Yusuf. Consequently, the Defendant, his agents or servants, are permanently restrained from selling, transferring, charging, leasing, or in any manner interfering with the Plaintiff's possession and enjoyment of that property.
33. With regard to House No. 32, Amana Estate (Nairobi/Block 103/692) and Flats Nos. 8F9 and 8F10 at Ibragoi Plaza, Eastleigh, the Court has already found that the Plaintiff did not establish any direct financial contribution or traceable link between her funds and the acquisition of those properties. The claim in respect of those properties therefore fails. They shall remain registered in the name of the Defendant, who is at liberty to continue deriving income therefrom.
34. As to special damages, the law is settled that such damages must not only be specifically pleaded but also strictly proved. The Plaintiff sought a sum of KShs. 32,490,000 being rental income allegedly collected by the Defendant from the suit properties. No rent statements, tenancy agreements, or audited accounts were produced to substantiate that figure. This Court therefore finds that the claim for special damages has not been proved to the required standard and it accordingly fails. Similarly, the prayer for general damages is unmerited, as the nature of the dispute is one of ownership and trust; such claims do not ordinarily attract an award of general damages absent proof of a separate tort or contractual breach.
35. On costs, this Court is guided by Section 27 of the *Civil Procedure Act*, which provides that costs follow the event unless the Court, for good cause, orders otherwise. Although the Plaintiff has succeeded in establishing ownership of the principal property, House No. 41, the Court notes that this dispute involves family members. In the interest of preserving familial relations, each party shall bear their own costs.

Final Orders

Accordingly, the Court makes the following final orders:

1. A declaration be and is hereby issued that House No. 41, Amana Estate, South C (Nairobi/Block 103/683) was solely financed and acquired by the Plaintiff, Amina Mohamed Yusuf, and that the Defendant, Hussein Sheikh Aden Ali, holds the same in trust for the Plaintiff.
2. The Chief Land Registrar, Nairobi, shall forthwith rectify the register to remove the Defendant's name and register the Plaintiff as the sole proprietor of House No. 41, Amana Estate, South C (Nairobi/Block 103/683).
3. A permanent injunction is hereby issued restraining the Defendant, his agents, servants, or any person acting under his authority, from selling, charging, alienating, transferring, or in any way interfering with the Plaintiff's possession, ownership, or enjoyment of House No. 41.
4. The Plaintiff's claim in respect of House No. 32, Amana Estate (Nairobi/Block 103/692) and Flats Nos. 8F9 and 8F10, Ibragoi Plaza, Eastleigh, is dismissed for want of proof.
5. The Plaintiff's prayers for special and general damages are declined.



6. Each party shall bear their own costs.

It is so ordered!

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON 6TH DAY OF NOVEMBER, 2025.

MOHAMMED N. KULLOW

JUDGE

Judgment delivered in the presence of: -

. for the Plaintiff

. for the Defendant

Philomena W. Court Assistant

