



**MKN v DMN (Matrimonial Cause E006 of 2024)  
[2025] KEHC 16030 (KLR) (5 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 16030 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT EMBU  
MATRIMONIAL CAUSE E006 OF 2024  
RM MWONGO, J  
NOVEMBER 5, 2025  
IN THE MATTER OF THE DIVISION OF MATRIMONIAL PROPERTY  
AND  
IN THE MATTER OF THE MATRIMONIAL PROPERTY ACT, CAP 152 OF LOK  
AND  
IN THE MATTER OF LAND REGISTRATION ACT, CAP 300 LOK  
BETWEEN  
MKN ..... APPLICANT  
AND  
DMN ..... RESPONDENT  
JUDGMENT**

**The Originating Summons (OS)**

1. The applicant filed suit through an OS dated 15<sup>th</sup> October 2024. In it she seeks the following orders:
  1. That pending hearing and determination of this Cause, this Honorable Court do issue an order of temporary injunction against the Respondent restraining the Respondent by himself, his agents and or servants from selling, disposing off and/or in any other way adversely dealing with all that property known as Title Number Gaturi/Weru/XXX (spent);
  2. That pending the hearing and determination of this Cause, this Honorable Court do issue an order of temporary injunction against the Respondent restraining the Respondent from selling, transferring, using as collateral or in any way dealing with Motor Vehicle of make Toyota Harrier and Registration No. KBZ XXXA (spent);



3. That this Honourable Court be pleased to declare that the property known as Title Number Gaturi/Weru/XXX, together with all buildings and developments thereon, acquired and/or developed through the joint funds and efforts of the Applicant and Respondent during their marriage, and registered in the joint names of the Applicant and Respondent, constitutes Matrimonial Property;
  4. That this Honourable Court be pleased to declare that the Motor Vehicle, make Toyota Harrier, Registration No. KBZ XXXA, acquired through the joint funds and efforts of the Applicant and Respondent during their marriage, is Matrimonial Property, jointly owned by the Applicant and Respondent, and currently held by the Respondent in trust for the benefit of the Applicant;
  5. That this Honourable Court be pleased to declare that the Applicant is entitled to 50% or such higher proportion of the property known as Title Number Gaturi/Weru/XXX, together with all buildings, developments, and movables thereon, as the Court may deem just;
  6. That this Honourable Court be pleased to declare that the Applicant is entitled to 50% or such higher proportion of the Motor Vehicle, make Toyota Harrier, Registration No. KBZ XXXA, as the Court may deem just;
  7. That this Honourable Court be pleased to issue an order directing that the property known as Title Number Gaturi/Weru/XXX and the Motor Vehicle, Registration No. KBZ XXXA, be divided equally between the parties, and if incapable of equal division, that the properties be sold and the net proceeds be shared equally between the Applicant and the Respondent;
  8. That this Honourable Court be pleased to order that the valuation, sale, and division of the property known as Title Number Gaturi/Weru/XXX and the Motor Vehicle, Registration No. KBZ XXXA, be carried out within 60 days from the date of judgment, with the costs of valuation and sale to be borne by the Respondent; and
  9. That the cost of this application and incidentals thereto be borne by the respondent
2. It is not in dispute that the marriage between the applicant and the respondent was solemnized on 30<sup>th</sup> March 2015, and was dissolved on 23<sup>rd</sup> January 2024. The applicant stated that land title number Gaturi/Weru/XXX and the Motor Vehicle, Registration No. KBZ XXXA were acquired and developed jointly during the subsistence of their marriage.
  3. Through her supporting affidavit to the OS, the applicant stated that he has one child with the respondent. During her marriage to the respondent, she financially contributed towards purchase of land title number Gaturi/Weru/XXX when she paid Kshs.400,000/= . She produced documentary evidence to prove this. She stated that when they decided to construct their matrimonial home on that land, she personally supervised the construction and even bought some construction materials.
  4. She stated that she bought household items for their new house and she took care of the home. She deposed that during her marriage to the respondent, she borrowed loans to buy 2 cars which they later sold in order to buy motor vehicle Registration No. KBZ XXXA. After their marriage, she is still repaying the loans but the respondent is using the said motor vehicle alone, to the exclusion of the applicant. She indicated that she supported the respondent with decision making, extended family engagements, caring for their child and doing other household responsibilities.
  5. When she divorced the respondent, she stated, he abdicated his parental responsibility towards their daughter despite him being ordered by court to pay maintenance every month. This has left the



applicant with an extra burden of providing for the child singlehandedly. She wants 50% or more of the 2 named properties acquired during the marriage so that both parties can move on with their lives separately, even if it means selling the properties and dividing the value between them.

### **Replying Affidavit**

6. The respondent filed a replying affidavit dated 06<sup>th</sup> February 2025 in which he termed the OS as vexatious and an abuse of the court process. Nonetheless, he conceded that the land title number Gaturi/Weru/XXX is the only property that was acquired during his marriage to the applicant and it is the place where she lives with their daughter. That he took out a loan towards purchase of that land and he is still servicing that loan at the rate of Kshs.94,565/= per month. He produced a copy of his payslip as evidence.
7. He stated that the receipts that were produced by the applicant were not proof of any contribution towards purchase of the land as they were not related to the said transaction. That the property is registered in the names of both of them and that its location is most appropriate to raise their child. This is why he proposed that the status of the property be left as is given that he is still repaying the loan he took out to buy and develop the land. He proposed that the property be shared at the ratio of 75%:25% in his favour and that the value considered excludes the outstanding loan amount of Kshs.4,460,405.85/= given that the applicant did not contribute to purchase of the property.
8. Regarding the motor vehicle registration number KBZ XXXA, he stated that he took out a loan to purchase it and this was before the applicant sold her own motor vehicle which was in her name. He said that she did not participate in purchasing the named motor vehicle and he produced a bank statement to prove that he took out a loan.
9. He deposed that he has continually remitted Kshs.25,000/= monthly as the child's maintenance as ordered by court, and he has never defaulted. He urged the court to order that land parcel number Gaturi/Weru/XXX be shared at the ratio of 75%:25% in his favour after deduction of the loan he is repaying. He urged the court not to declare the motor vehicle as matrimonial property.

### **Summary of the Evidence at the hearing**

10. The matter was heard *viva voce*.
11. AW1 was the applicant who relied on her supporting affidavit and the annexures thereto as her evidence-in-chief. In cross-examination, she stated that she was working as a store keeper at Embu market earning Kshs.30,000/= but she did not have evidence of this. That she used these earnings to pay bills and care for the home. She stated that during the marriage, both of them provided towards bills and other needs although she did not know how much the respondent earned from his job as a pharmacist. That she also had a baby shop where she earned some more money from selling children's clothes. She had receipts to show that she was running the business but the income from it did not go towards contributing to household expenses.
12. She stated that the respondent started paying Kshs.25,000/= as maintenance from 2023. There are times when she paid school fees for their child. She testified that she made financial contribution towards constructing the matrimonial home but she did not keep records of how much it was. The materials were sourced from different places and sometimes she paid for them from her salary and her business. She didn't know whether the respondent took a loan for constructing the house and that he did not give her money for the construction expenses.



13. The house is still incomplete and she cannot tell how much has been spent towards its construction but she estimated that she put in around Kshs.2,000,000/=. She said that she transferred money into the respondent's account severally and she had emails and statements to prove this. She exhibited withdrawals of Kshs.150,000/= and Kshs.200,000/= which she said was money she gave to the respondent. It was her evidence that she sold her car, Mazda Demio and bought another car, Nissan Dualis but the respondent did not contribute to purchase of these cars.
14. Further, she stated that the respondent sold the Nissan Dualis and used the money as part payment for the current vehicle which is registered in his sole name. She stated that she wants 50% of the matrimonial home, which, even though it is incomplete, its value is about Kshs.8,000,000/=. She did not know that the respondent took out a loan which he is still repaying and he never mentioned this to her when they spoke about finances.
15. RW1 was the respondent. He adopted and relied on his replying affidavit and the annexures thereof as evidence. In cross-examination, he conceded that land parcel number Gaturi/Weru/XXX is matrimonial property and it should be declared as such but the motor vehicle is not. That the land parcel number Gaturi/Weru/XXX should be distributed between them with the applicant only being entitled to 25% of its value. He stated that the time of purchasing the property, the applicant paid Kshs.400,000/= out of the purchase price which was Kshs.750,000/=. That the balance was paid to the seller of the land through the applicant but he did not deposit any money directly to the seller.
16. He produced a bank statement showing that he took a loan and gave Kshs.218,500/= to the applicant to complete payment for the land purchase. He stated that the title for the land is in both their names and he had the building plans. He did not have any receipts for the construction materials that he bought. He said that in 2020, he took a loan of Kshs.3,413,907/= to start construction. That the only commonly owned property is Gaturi/Weru/XXX and the applicant does not deserve 50% of it. He stated that the applicant's previous vehicles were in her name and that the current vehicle belongs to him alone. He had no problem with the property being declare matrimonial property but not in equal shares.

### **Parties' Submissions**

17. The applicant relied on sections 6 and 7 of the *Matrimonial Property Act* (MPA) and the case of *TMV v FMC* [2018] eKLR and argued that land parcel number Gaturi/Weru/XXX should be declared as matrimonial property since it was acquired during the marriage. That since the property was registered in the names of the applicant and the respondent jointly, they are entitled to equal shares. As regards the motor vehicle registration number KBZ XXXA, the same was also acquired during the marriage and so it is matrimonial property even though it is registered in the name of the respondent alone.
18. For this argument, she relied on section 14(a) of MPA and the case of *ALM v JNN* [2022] KEHC 1789 (KLR). She urged the court to adjudicate the matter based on its own unique set of facts and she relied on section 2 of the MPA and the case of *TKM v SMW* [2020] KECA 684 (KLR). She submitted that the respondent himself admitted to contributing only Kshs.218,500/= out of Kshs.750,000/= for purchasing the land. That there is no evidence that the loan taken by the respondent was used towards construction of the matrimonial home, and he testified that the loan amount was transferred to their child's account which information was not disclosed in any documentary evidence.
19. She stated that non-monetary contribution includes domestic work as was held in the case of *CWM v JPM* [2017] KECA 211 (KLR). She urged the court to find that she made monetary and non-monetary contributions towards acquisition and development of land parcel number Gaturi/Weru/XXX; and also, toward purchase of motor vehicle registration number KBZ XXXA. She urged the court to find



that she is entitled to 50% of the same. Further reliance was placed on the cases of PWK v JKG [2009] KEHC 3772 (KLR) and AWM v JGK [2021] KEHC 4780 (KLR).

20. On his part, the respondent submitted that the applicant should only get 25% of land parcel number Gaturi/Weru/XXX and nothing of the motor vehicle registration number KBZ XXXA. He argued that before and during the marriage, each party kept their own assets separate and in their names except the land. He stated that he gave the applicant Kshs.400,000/= to pay the vendor and he paid some of the balance directly to the vendor and some of it through the applicant. He asserted that he took out a loan to construct the house which loan he is repaying presently and until February 2031.
21. He stated that he also borrowed another loan to buy the motor vehicle and the applicant did not in any way contribute to its acquisition. That he did not claim any interest in any of the vehicles bought by the applicant. He was of the view that the land remains as it is, and should it be sold then the value should exclude the outstanding loan amount before distribution at the ratio of 75%:25% in favour of the respondent. He relied on sections 6 and 7 of MPA and the cases of DNM v LRNG [2021] KEHC 13429 (KLR), CWG v HGN & another [2024] KEHC 11723 (KLR), PNN vs ZWN (2017) eKLR and TKM v SMW [2020] KECA 684 (KLR).

### Issues for Determination

22. Issues for determination are:
  1. What constitutes matrimonial property in this case; and
  2. How should the matrimonial property be divided?

### Analysis and Determination

23. Section 14 of the *Matrimonial Property Act* provides:

“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 a rebuttable presumption that their beneficial interests in the matrimonial property are equal.”

24. Matrimonial property is defined under section 6(1) of the *Matrimonial Property Act* as:

“(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.”

25. The marriage between the applicant and respondent was solemnized on 30<sup>th</sup> March 2015 and it was dissolved on 23<sup>rd</sup> January 2024. The applicant wants 2 properties namely Gaturi/Weru/XXX and the Motor Vehicle Registration No. KBZ XXXA declared as matrimonial property. According to the MPA, so long as the properties were acquired during subsistence of the marriage between the parties, that property is matrimonial property.



26. In the present case, there is no dispute between the parties that parcel No. Gaturi/Weru/XXX is matrimonial property. The only point in issue is what is the extent of each party's contribution or portion thereof.
27. Section 14 of the MPA goes on to state that even if the property is in the name of one of the spouses, there is a rebuttable presumption that the spouse was holding it in trust for the other spouse. As stated, the parties agree that land parcel number Gaturi/Weru/XXX is, and should be, declared matrimonial property but the motor vehicle Registration No. KBZ XXXA is not matrimonial property. The applicant stated that the respondent sold her vehicle and used the proceeds thereof as part payment for the current motor vehicle Registration No. KBZ XXXA which is only registered in his name.
28. According to the respondent, the vehicle was bought using proceeds of a loan he took for that purpose. He produced his bank statements and denied having received any money from the applicant towards purchase of the named vehicle. He said that they did not have a prenuptial agreement but it was normal for both of them to own their own property in their names exclusively.
29. In view of section 14 of the MPA, the vehicle should be deemed as matrimonial property because it was acquired during the marriage. Without a prenuptial agreement, it cannot be assumed that the respondent bought the vehicle for himself during the marriage, excluding the applicant.
30. With regard to how the matrimonial property should be distributed, the court is bound to consider the contribution of both parties to the acquisition of the matrimonial property. Unless there exists a pre-nuptial agreement, section 7 of the *Matrimonial Property Act* provides that matrimonial property should be divided according to each party's contribution. 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. Under section 2 of the *Matrimonial Property Act*:

“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;”

There is no indication that the list in section 2 is exhaustive.

32. The applicant stated and proved that she participated in paying for purchase of the land on which the matrimonial home is built. She further stated that after the land was bought, construction of the house began and she would buy some construction materials and even physically supervise the construction. She stated that she was always present to support the respondent in his decision making and problem solving; that she cared for the matrimonial home and was involved in furnishing it; that she offered emotional support to the respondent and also supported the family by attending extended family functions when the respondent was absent. On this basis, she claimed 50% of the value of matrimonial property.



33. The respondent undoubtedly proved that he paid about Kshs.219,400/= towards purchasing the land whose purchase price he said was Kshs.750,000/=. He said that he took another loan of Kshs.3,413,800/= which, although it was moved to their daughter's bank account, was used for constructing the matrimonial home. He did not deny that the applicant indeed participated in buying and developing the matrimonial home but that she is only entitled to 25% of it. He stated that since the applicant and their daughter live in that house, it should not be sold because he is still repaying the loan, he took out to build it until 2031.

34. Article 45(3) of the Constitution provides:

“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.”

35. The Supreme Court of Kenya dealt with this provision of the Constitution in light of the question of contribution of spouses to matrimonial property in the case of JOO v MBO; Federation of Women Lawyers (FIDA Kenya) & another (Amicus Curiae) [2023] KESC 4 (KLR), There, the Apex Court it was held:

“Equality of parties to a marriage had largely been interpreted and construed in two ways. On the one hand, an interpretation of article 45(3) of the Constitution had been construed to mean a division of matrimonial property down the middle through the literal application of the 50:50 division ratio. Proponents of that argument largely opined that since non-monetary contribution could not be quantified but was equally important, a split right in the middle would be more appropriate. The second approach was that ‘equal’ as provided for under article 45(3), meant that a party obtained an equivalent of what one contributed, monetarily or otherwise.

Article 45(3) of the Constitution underscored the concept of equality as one that ensured that there was equality and fairness for both spouses. Equality and fairness were therefore one and intertwined. Equality also underscored the concept that all parties should have the same rights at the dissolution of a marriage based on their contribution, each party's contribution to the acquisition of matrimonial property could not have been done on an equal basis as a party could have significantly contributed more in acquiring property financially as opposed to the other party.

Equity denoted that the other party, though having not contributed more resources to acquiring the property, could have nonetheless, in one way or another, through their actions or deeds, provided an environment that enabled the other party to have more resources to acquire the property. That was what amounted to an indirect contribution. Equity therefore advocated for such a party who could seem disadvantaged for failing to have the means to prove direct financial contribution not to be stopped from getting a share of the matrimonial property.”

36. It is trite that every must case be considered and tried based on its own unique set of facts (see Francis Njoroge v Virginia Wanjiku Njoroge, Nairobi Civil Appeal No. 179 of 2009). In the present case, the applicant leans on the argument that she provided monetary and non-monetary contribution. On the aspect of non-monetary contribution, the court in the case of PWK v JKG (supra) held:

“Where the disputed property is not so registered in the joint names of the spouses but is registered in the name of one spouse, the beneficial share of each spouse would ultimately



depend on their proven respective proportion of financial contribution either direct or indirect towards the acquisition of the property. However, in cases where each spouse has made a substantial but unascertainable contribution, it may be equitable to apply the maxim equality in equity while needing the caution of Lord Pearson in *Gissing v Gissing* [1970] 2 ALL ER. 780 Pg. 788.”

37. In the present case, the property Gaturi/Weru/XXX is registered in the names of both the applicant and the respondent. Both parties have demonstrated having made monetary contributions to the land and construction on it, while the applicant has also proved non-monetary contribution by supervising the construction and the workers. It is equitable that the applicant’s overall contribution to the said property be translated to mean 50% of the property, particularly in light of the fact that it is also registered jointly in their names.
38. Regarding motor vehicle Registration No. KBZ XXXA, the applicant has not proved monetary contribution but the vehicle was acquired during the marriage. It is fair that the applicant be given 25% of the same.

### **Disposition**

39. In the result, I find that the Originating Summons succeeds and orders are issued on the following terms:
  1. A declaration is hereby made that property title number Gaturi/ Weru/XXX, together with all buildings and developments thereon, was acquired and developed through the joint monetary and non-monetary contributions and efforts of the Applicant and Respondent during their marriage. The property is, therefore, matrimonial property;
  2. A declaration is made that motor vehicle Registration No. KBZ XXXA, although registered solely to the respondent, was acquired through the joint efforts of the Applicant and Respondent and in trust for the applicant during their marriage. The vehicle is, therefore, a matrimonial property;
  3. An order is hereby made that property title number Gaturi/Weru/XXX be valued within 60 days of this judgment, sold and the proceeds thereof be divided equally between the applicant and the respondent; or  
Alternatively,  
Once the property has been valued, the Applicant shall be at liberty to purchase the Respondent’s share of contribution of the property and vice versa. If this option is taken, the party who buys off the other’s share shall have the property transferred solely to themselves within 60 days of payment of the share contribution.
  4. An order is hereby made that the motor vehicle Registration No. KBZ XXXA be valued within 60 days of this judgment, sold and the proceeds be divided between the parties at a rate of 75%:25% in favour of the respondent; or  
Alternatively,  
Once the motor vehicle has been valued, the applicant should be at liberty to purchase the Respondent’s share of contribution of the vehicle and vice versa. If this option is taken, the party who buys off the other’s share shall have the vehicle transferred solely to themselves within 60 days of payment of the share contribution.



5. Costs of valuation shall be borne at the rate of 50%:50% by the parties regarding property title number Gaturi/Weru/XXX and at the rate of 75%:25% against the respondent regarding motor vehicle Registration No.KBZ XXXA.
6. There should be no order as to costs.

Orders accordingly.

**DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 5<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**R. MWONGO**

**JUDGE**

Delivered in the presence of:

1. Micheni for Applicant
2. M. Mboi holding brief for Guantai for Respondent
3. Francis Munyao - Court Assistant

