



REPUBLIC OF KENYA



KENYA LAW
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**CNK v SMC (Civil Suit E068 of 2021) [2025] KEHC 17433 (KLR)
(Family) (28 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 17433 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
CIVIL SUIT E068 OF 2021
PM NYAUNDI, J
NOVEMBER 28, 2025**

BETWEEN

CNK APPLICANT

AND

SMC RESPONDENT

JUDGMENT

1. The Originating Summons dated 10th August 2021 is brought pursuant to Article 45 (3) of *the Constitution*, Section 3A, of the *Civil Procedure Act*, Order 37 of the Civil Procedure Rules, Section 7 and 17 of the *Matrimonial Property Act* and all other enabling provisions of the law. In it, CNK seeks against SMC, the Respondent the following orders;
 1. That this Honourable Court be pleased to issue an order declaring the properties herein namely LR No. XXXXX/22, (Kikuyu), Land Reference No. XXXX/257 Original L.R No. 8486/XXX and KJD/Olchoro-Onyore/XXXXX2 as matrimonial properties.
 2. That the court be pleased to order that the properties namely LR No. XXXXX/22, (Kikuyu) Land Reference No. XXXX/257 Original LR No. XXXX/4/XXX and KJD/Olchoro-Onyore/XXXXX2 be shared equally between the parties herein.
 3. That this Honourable Court be pleased to make such further orders as the interests of justice may require.
 4. That the Respondent be condemned to pay costs of this suit.
2. The Summons was supported by an Affidavit of even date sworn by the Applicant.



3. The Respondent was served with the summons but he did not participate in these proceedings. This matter therefore, proceeded undefended.
4. The Applicant states briefly that she and the Respondent got married on 15th December 2007 under the Christian Marriage and Divorce Act. Their marriage was blessed with two issues B.W.M and P.M.M. During the subsistence of their marriage, they jointly acquired properties known as L.R No. XXXXX/22 (Kikuyu), Land Reference No. XXXX/257 Original L.R No. XXXX/4/XXX and KJD/Olchoro-Onyore/XXXXX2. She contributed financially towards the purchase of Land Reference No. XXXX/257 Original L.R No. XXXX/4/XXX and KJD/Olchoro-Onyore/XXXXX2. She left the home in 2014 and the Respondent has since then rented out the house and enjoys rent proceeds to her exclusion. She avers that she has suffered loss, great inconvenience and humiliation because of the Respondent's refusal to allow her and the children use the property. She was forced to look for alternative accommodation. She avers that her contribution towards the purchase and development of these properties is over 50%.
5. The summons was disposed of by way of viva voce evidence. The Respondent did not testify or file submissions.

Summary Of Applicant's Evidence.

6. She sought to amend the Originating Summons by deleting L.R No. XXXXX/22. Her evidence is that she and the deceased were husband and wife. Their marriage was blessed with two issues. During the subsistence of their marriage, they jointly acquired properties known as LR No. XXXX/257, KJD/Olchoro/Onyore/XXXXX2. She contributed towards the purchase of these properties. She was in active employment during that time. They started constructing their family home in LR No. XXXX/257 between 2008-2009. She took a loan from CHUNA. The Respondent also contributed towards the purchase. The Respondent has since then rented out the house. She asked the court to adopt her receipts. The property in Kajiado is not developed. She asked the court to award her a share in LR No. XXXX/257 and KJD/Olchoro-Onyore/XXXXX2. She argued that her contribution is 90%.
7. The Applicant relied on her Originating Summons dated 30/3/2023, her supporting affidavit sworn on 30/3/2023 and the annexures in the supporting affidavit as her evidence in chief.

Applicant's Submissions.

8. The Applicant filed written submissions dated 1st July 2025. She relied on section 6 of the *Matrimonial Property Act* which defines what a matrimonial property is. It was her submission that the properties are matrimonial properties. They were purchased and developed by joint efforts.
9. It was her submission that she bore a greater responsibility by playing supervisory role and financial contribution. The money paid towards the purchase of LR No. XXXX/257 was from joint family savings account where both parties made deposits. The Respondent was out of the country when construction was taking place.
10. Relying on Section 7 of the *Matrimonial Property Act* and the decision of J.O.O v M.B.O Supreme Court Civil Appeal No. 11 of 2022, it was her submission that her contribution was both direct and indirect. She worked as a lecturer earning a decent income and was able to save for the purchase and development of the properties. She was also responsible for household expenditure which enabled the Respondent to purchase KJD/Ochoro-Onyore/XXXXX2.



11. Relying on Article 45 (3) of *the Constitution* and the decision in Francis Njoroge v Virginia Wanjiku Njoroge CA 179 of 2009 on the rights of parties after divorce, it was her submission that she had proved her contribution and is therefore entitled to at least 50 % of both properties.

Analysis And Determination.

12. The main issues arising for determination are;
 - i. Whether the property herein amounts to matrimonial property.
 - ii. How the properties should be shared.

Whether the properties herein amount to matrimonial property.

13. On what constitutes matrimonial property, I am guided by Section 6 of the *Matrimonial Property Act* that defines matrimonial property as:
 - (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.
14. Basically, for property to qualify as matrimonial property, it must meet the definition in Section 6 quoted above. From the evidence available in court, it is clear to me that the Plaintiff and the Defendant acquired the property and developed it in the pendency of the marriage.
15. Section 7 of the *Matrimonial Property Act* is clear in its terms that:

“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.”
16. I have considered the provisions of *the Constitution* on Article 45(3) as well. This article provides that:

“Parties to a marriage are entitled to equal rights at the time of marriage, during the marriage and at the dissolution of marriage”
17. Although this provision grants equal rights to parties to a marriage as stipulated, this does not mean that a party to a marriage is entitled to equal share of the property acquired during marriage unless his or her contribution is ascertained to have been equal to that of the other spouse. However, the article guides the courts in determining the rights of parties to a marriage in respect to subdivision of matrimonial property. This view, that the provisions of Article 45(3) of *the Constitution* does not entitle parties to equal distribution of matrimonial property, was well stated by the Court of Appeal (Kiage, JA) in PNN v ZWN [2017] eKLR where the Judge had this to say:

“Thus it is that *the Constitution*, thankfully, does not say equal rights ‘including half of the property.’ And it is no accident that when Parliament enacted the *Matrimonial Property Act*, 2013, it knew better that to simply declare that property shall be shared on a 50-50 basis. Rather it set out in elaborate manner the principle that division of matrimonial property between spouses shall be based on their respective contribution to acquisition.”



18. The share of each party to a marriage is pegged on the contribution made by each party. That is the law as it is and as applied in various decisions.
19. Section 14(b) of the *Matrimonial Property Act* provides that: -
Where matrimonial property is acquired during marriage—
 - (b) in the names of the spouses jointly, there shall be rebuttable presumption that their beneficial interests in the matrimonial property are equal.
20. Parties seeking division of the matrimonial property are under an obligation to prove their contribution towards acquisition and development of the matrimonial property.
21. In *Federation of Women Lawyers Kenya (FIDA) v Attorney General & another* [2018] eKLR the court stated that: -

“The law recognizes equal worth and equal importance of the parties in marriage. Thus, the beneficial share of each spouse as the law on the division of matrimonial property stands in Kenya ultimately depends on the parties proven respective proportions of financial contribution either direct or indirect towards the acquisition of the property. First, the Act recognizes monetary and non-monetary contribution which is clearly defined. By providing that a party walks out with his or her entitlement based on his or her contribution, the section entrenches the principle of equality in marriage.”
22. Although the applicant indicated that she made a financial contribution of property known as LR No. XXXX/257. Her evidence on her contribution is not controverted. She has attached receipts, invoices and delivery notes showing material bought for construction. The evidence also shows that the Applicant made non-monetary contribution by way of love, companionship and managing the home. She also supervised the construction of the home when the respondent was away. The non-monetary contribution of the Applicant in the purchase and construction of the properties herein is recognized in law. As such, the Respondent cannot be entitled to the exclusive rights to the properties to the exclusion of the Applicant.
23. Ascertaining contribution of spouses is always a challenging assignment. The difficult task of determining the rights of parties in a marriage in division of their property in the absence of concrete proof of contribution is left to judicial discretion. There is no formula and the Court has to make an unscientific estimate of each spouse’s contribution. In the case of *M, A, A v, A R* [2018] eKLR, Chitembwe, J. had this to say:

“There is no formula for distribution of Matrimonial Property. What the court should consider is the contribution by the parties towards the property which is the subject of distribution. Where the financial contribution of each party is known, it becomes easy for the court to distribute the property in line with Section 7 of the *Matrimonial Property Act*. However, where the contribution is non- monetary, the situation becomes difficult. The court has to estimate the efforts by the spouse who did not make any financial contribution and give it a value, either as a percentage or as a lump sum. The current situation is that the defendant equally did not make any financial contribution.
24. The totality of my analysis of the evidence presented before me is that the Applicant made substantial monetary contribution towards developing the matrimonial property. I am satisfied on a balance of probabilities that the Applicant has proved her case to the required standard. I will therefore assess the



combined monetary and non-monetary contribution of the Applicant to LR No. XXXX/257 at 50%. Likewise, with regard to KJD/Olchoro-Onyore/XXXXXX2, the Applicant is entitled to 50% of it.

25. Consequently, I find for the Plaintiff and allow the Originating Summons in the following terms;
- i. That a declaration is hereby issued that the Applicant is entitled to 50% value of developments on land parcel LR No. XXXX/257 comprising the matrimonial home.
 - ii. That a declaration is hereby issued that the Applicant is entitled to 50% of KJD/Olchoro-Onyore/XXXXXX2.
 - iii. That the property be valued by a valuer to be nominated by the Applicant and the Respondent within 14 days. Failing of which the Applicant shall nominate the valuer.
 - iv. The valuer so appointed to furnish report within 21 days. The Respondent to pay out to the Applicant a sum equivalent of 50% of the Value of LR No. XXXX/257 and 50% of the value of KJD/Olchoro-Onyore/XXXXXX2 within 60 days of presentation of the Report.
 - v. In the event that the respondent is unable to buy out the applicant, the properties shall be sold and the net proceeds shared equally between the parties
 - vi. As the respondent did not participate there shall be no order as to costs

DATED AND DELIVERED AT NAIROBI THIS 28TH DAY OF NOVEMBER 2025

M NYAUNDI

JUDGE

In the presence of:

Fardosa Court Assistant

Ms. Githinji for Applicant

