



**MWN v SNN (Matrimonial Cause E001 of 2024)  
[2025] KEHC 17217 (KLR) (24 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 17217 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
MATRIMONIAL CAUSE E001 OF 2024  
PN GICHOHI, J  
NOVEMBER 24, 2025**

**BETWEEN**

**MWN ..... APPLICANT**

**AND**

**SNN ..... RESPONDENT**

**JUDGMENT**

1. By Originating Summons dated 10<sup>th</sup> January, 2024 brought under Section 17 of the Matrimonial Property Act, No. 49 of 2013, Rule 3(2) of the Matrimonial Causes Rules, Article 40 and 45(3) of the Constitution of Kenya 2010, the Applicant seeks the following Orders against the Respondent;-
  - a. A declaration that the Plot No. C6 101-Kayole is matrimonial property and was acquired and developed through the joint efforts of the Applicant and the Respondent during their marriage , and is owned by the Applicant and the Respondent in the ratio of 50% to the and 50% to the Respondent respectively or in such proportion as the at this honourable Court may deem fit.
  - b. The Registrar of this Court or such officer be authorised to execute all documents and do all such things as necessary to transfer the Applicant’s portion in the aforementioned property to the Applicant and /or his nominee in place of the Respondent, to be held by the Applicant and /or his nominee without interruption.
  - c. As alternative to paragraph (b) above, the property to be valued, sold and proceeds of sale be shared by the Applicant and the Respondent in the ratio of 50% to the Applicant and 50% to the Respondent
  - d. Costs of the Application be provided for.



2. The grounds in support of the Originating Summons are found on the face of the application and in the Supporting Affidavit sworn by the Applicant on 6<sup>th</sup> January, 2024.
3. She states that the parties herein celebrated their marriage on 16<sup>th</sup> September, 1982. During the marriage, they acquired and erected a 4-story rental property on PLOT NO.c6 101-kayole, which is registered solely in the Respondent's name to be held in trust for the family.
4. The noted that her business generated the entirety of the matrimonial income used for the acquisition and development of the suit property, a resource that was subsequently diminished due to the Respondent's actions in running the business down.
5. She states that throughout the marriage, the Respondent has never made substantial financial contributions to the subsistence and education of their children and grandchildren or to family expenses, and he continues to neglect making any contributions towards the family's maintenance.
6. As a result, the Applicant has been forced to continue solely providing for the maintenance and upkeep of the Respondent, the children, and the grandchildren, including paying the grandchildren's school fees.
7. The Applicant states that despite the fact that she has been providing for the family, she notes that the Respondent has recently begun issuing arbitrary notices to tenants, instructing them to stop paying rent to the Applicant, when she has been the one collecting the said rent since 2006 for her and the grandchildren's daily sustenance.
8. She contends that this attempt by the Respondent to forcibly seize the matrimonial property is unlawful and will adversely affect the Applicant and the grandchildren. She argues that unless the court intervenes, she will suffer substantial loss that cannot be compensated in damages.
9. It is her position that the Respondent's actions violate her proprietary rights guaranteed under the law, and court intervention is necessary to prevent her rights from being defeated and therefore, it is in the interest of justice that the application be allowed.
10. In response to the Originating Summons, the Respondent raise a Notice of preliminary Objection dated 19<sup>th</sup> February, 2024 and based on four grounds;-
  1. The Plaintiff has invoked the Honourable Court's jurisdiction prematurely, contrary to the provisions of Section 7 and 17 of the *Matrimonial Property Act* No. 49 of 2013.
  2. There is no proper cause herein, as the Originating Summons creating this matter is fatally defective and incurably wanting in form.
  3. There is no matrimonial dispute because the Applicant and the Respondent are not divorced or separated.
  4. The Applicant and Respondent are still living together as husband and wife in their matrimonial home at Nakuru Kabatini.
11. In addition to the Preliminary Objection, the Respondent filed a Replying Affidavit sworn on 6<sup>th</sup> December, 2024. Confirming that he is legally married to the Applicant, and that they have three adult children, he states that their matrimonial home is in Nakuru, where the Applicant owns three parcels of land, including one where she has erected a bungalow, and she uses the remaining land for farming, including dairy cows and cash crops for sale. However, that the Applicant has withheld material facts concerning her net income from farming and dairy cows.



12. He accuses the Applicant of approaching the court with unclean hands by failing to disclose the properties she controls in Nakuru, where she lives and deposits all income into her bank account and for failing to account for the rent she collects from the plot in Nairobi.
13. He states that he retired from his wholesale business in Nairobi around 2021 and returned to Nakuru. That following his retirement, he had no source of income and had to rely on the Applicant for upkeep, as his savings were used to clear outstanding loans.
14. He claims that the living condition in Nakuru became hostile, as he was subjected to cruelty and physical abuse by their 42-year-old unmarried son, resulting in him being locked out of the home and having his phone taken away in January 2024. As a result, he sought refuge in his Kayole plot in Nairobi, taking over its management from a previous caretaker due to its state of disrepair and lack of tenants.
15. He asserts that he has no parental obligation toward the grandchildren, whose parents are alive, but whom the Applicant insisted on keeping and maintaining. He added that for his safety, he lives in Nairobi while his personal belongings and ownership documents remain in Nakuru. He added that he uses the rent collected from the Kayole property for repairs, his personal upkeep, and medical treatment.
16. He depones that the Originating Summons is defective, and that there is no matrimonial dispute since the parties are neither divorced nor separated and are still living as husband and wife in Nakuru and therefore, the Applicant has prematurely invoked the court's jurisdiction contrary to the *Matrimonial Property Act*, thus making the Originating Summons defective.
17. In conclusion, he sates that the application lacks merit, bad in law, and an abuse of court process.
18. Pursuant to the directions by this Court, the Originating Summons was disposed of by written submissions. However, there was no compliance by the Applicant and she did not attend Court despite being given a chance to do so. Consequently, the Respondent filed submissions dated 9<sup>th</sup> May 2025.

### **Respondent's Submissions**

19. The Respondent framed two issues upon which he based his submissions, that is ; whether the Court can entertain the issue of distribution and who should bear the costs.
20. On the first issue, it was submitted that for any property acquired during marriage to qualify as a matrimonial property, it must meet the definition under Section 6 (1) of the Act which provides that matrimonial property includes;
  - (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.
21. Further, it was submitted that under Section 2 of the Act, 'Matrimonial home' has been defined as:-

“any property that is owned or leased by one or both spouses and occupied or utilized by the spouses as their family home, and includes any other attached property.”



22. Further, Section 14 of the Act was cited for it provides that:
- “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 rebuttable presumption that their beneficial interests in the matrimonial property are equal.”
23. The Respondent cited the case of T.M.V. vs F.M.C (2018) eKLR, where Nyakundi J, stated that;-
- “...for property to qualify as matrimonial property, it ought to have been acquired during the subsistence of the marriage between the parties unless otherwise agreed between them that such property would not form part of matrimonial property.”
24. On that basis, it was argued that the Respondent is not disputing that some of the properties enumerated are registered in the name of the Respondent and were purchased during their marriage. Only that the Applicant has to proof her contribution towards purchase of the said property which is in the name of the Respondent.
25. Further that the Applicant has failed to disclose to the Court the properties in Nakuru which are equally registered to his name but as a matrimonial property and the Applicant is currently living in the said property with full control and with all the income deposited in her bank account held in Family Bank.
26. That notwithstanding, the Respondent submitted that the Applicant has invoked this Court’s jurisdiction prematurely contrary to the provisions of Section 7 and 17 of the *Matrimonial Property Act* No. 49 of 2013 as there is no matrimonial dispute bearing in mind that the Applicant and the Respondent are not divorced or separated as per the Marriage Certificate attached by the Applicant.
27. On the contrary, that the parties are still living together as husband and wife in their matrimonial home at Nakuru Kabatini and therefore, the Court is not vested with any jurisdiction in this matter. In support of that argument, reliance was placed on the case of GM v PMM (Matrimonial Cause E001 of 2022) [2024] KEHC 2546 (KLR), where though affirming its jurisdiction under Section 17 of the Act, to hear an application for a declaration of rights over contested matrimonial property, even if a divorce has not been finalised, the court held that it cannot determine the distribution of the properties or respective shares in the absence of concrete proof of dissolution of marriage. Referencing Article 45 of *the Constitution* on protection of the sanctity of marriage, the Court held that allowing property distribution while the marriage subsists and without a final decree of divorce is premature and unavailable.
28. Based on the cited case, the Respondent submitted that the Applicant’s Originating Summons lacks merit, is bad in law and amounts to gross abuse of the court process and therefore, it ought to be dismissed.

### **Analysis and Determination.**

29. Upon perusal of the Originating Summons, the Preliminary Objection, the Affidavits filed in support and opposition of the Originating Summons and the annexures thereto, together with the Submissions by the Respondent, the issues for determination herein are;-
1. Whether the orders sought in the Origination Summons should issue.
  2. Who bears the costs.



30. The Applicant's core claim in the Originating Summons dated 10<sup>th</sup> January 2024 seeks a declaration of beneficial ownership over the property identified as PLOT NO. C6 101-Kayole as matrimonial property. The Applicant further seeks a resultant order for the division of the property, either equally or in such proportion as the Court may deem fit, based on the principle of contribution.
31. To start with Section 6 of the *Matrimonial Property Act*, 2013 defines 'matrimonial property' as "Matrimonial home, household goods and effects in the matrimonial home, any movable or immovable property jointly owned and acquired during the subsistence of the marriage."
32. Specifically, Section 6 of the Act states:- (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.(2) Despite subsection (1), trust property, including property held in trust under customary law, does not form part of matrimonial property.
33. Further, Section 7 of the Act, provides 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.’
34. Further, Section 17 of the *Matrimonial Property Act* on the other hand provide for action for declaration of rights to property as follows;-“(1) A person may apply to a court for a declaration of rights to any property that is contested between that person and a spouse or a former spouse of the person.(2)An application under subsection (1)—(a)shall be made in accordance with such procedure as may be prescribed;(b)may be made as part of a petition in a matrimonial cause; and(c)may be made notwithstanding that a petition has not been filed under any law relating to matrimonial causes.”
35. The spousal rights under Section 17 of the *Matrimonial Property Act* was elaborated in the case of P.N.N v Z.W.N [2017] KECA 753 (KLR), the Court of Appeal was giving meaning of section 17 of the repelled Married Women Property Act , which is an equivalent of Section 17 of *Matrimonial Property Act*, stated that;-“An inquiry may thus be made under Section 17 and declarations may be issued, the subsistence of the marriage notwithstanding. As stated by Lord Morris of Borthy-Guest in Pettit v. Pettit [1970] AC 777:-“One of the main purposes of the Act of 1882 was to make it fully possible for the property rights of the parties to a marriage to be kept separate. There was no suggestion that the status of marriage was to result in any common ownership or co-ownership of property. All this in my view negatives any idea that Section 17 was designed for the purpose of enabling the court to pass property rights from one spouse to another. In a question as to title to property, the question for the court was whose is this? And not to whom shall this be given?” The purpose of the Section is not to defeat rights but to provide a machinery for ascertaining rights and once ascertained, then the register would be changed to take account of them.”
36. Indeed, for a declaration under Section 17 of the *Matrimonial Property Act* to be granted, the Applicant bears the burden of proving two fundamental elements: first, the existence of the marriage; and second, that the suit property was acquired during the subsistence of that marriage and thus a matrimonial property.
37. It is therefore important to delineate the scope of this application. While the declaration of rights falls under Section 17, the actual division of matrimonial property can only be effected in accordance with Section 7 of the *Matrimonial Property Act*, a process typically undertaken upon the dissolution of the marriage by way of divorce.



38. In support of her case, the Applicant has tabled a Marriage Certificate evidencing the solemnisation of their marriage with the Respondent at Cathedral Church, Nakuru, on 26<sup>th</sup>, May 1981, a fact admitted by the Respondent. Consequently, the existence of the marriage is not in dispute.
39. On whether the suit property was acquired during the subsistence of that marriage thus a matrimonial property, there is no dispute as to the existence of the subject parcel of land known as PLOT NO. C6 101-Kayole and that it was acquired during subsistence of their marriage and though registered in the name of the Respondent.
40. Indeed, the Respondent does not dispute that the rental proceeds from the said property supported the family but is now using it for renovation of the property and for his medication. In the circumstances, that is a matrimonial property. However, the parties remain married and therefore, the prayer seeking the immediate division and sale of the property is untenable.
41. In conclusion therefore, the Originating Summons dated 10<sup>th</sup> January 2024 is hereby determined by the issuance of the following Orders:-
1. The subject parcel of land known as PLOT NO. C6 101-Kayole is hereby declared a matrimonial property.
  2. The prayer for distribution of the parcel of land known as PLOT NO. C6 101-Kayole is dismissed.
  3. This being a matter between spouses and in the circumstances herein, each party shall bear their own costs.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 24<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**PATRICIA GICHOHI**

**JUDGE**

In the presence of :-

N/A for Applicant

Ms Wanjiku Nguthuko for Respondent

Kamau, Court Assistant

