



**MWM v MWM (Matrimonial Cause 26 of 2016)
[2025] KEHC 17069 (KLR) (21 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 17069 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MATRIMONIAL CAUSE 26 OF 2016
SM MOHOCHI, J
NOVEMBER 21, 2025**

BETWEEN

MWM PETITIONER

AND

MWM RESPONDENT

JUDGMENT

1. Before me is an Originating Summons dated 23rd July, 2014 by Mary Wanjiru Muthoga in which she seeks the following reliefs;
 - i. That, Declaration be made by this Court that the properties';
 - a. Land Parcel MaelaNdabibi block 2962
 - b. Motor Vehicle Registration No. KBM 569J were acquired by the joint funds and efforts of the Plaintiff and the Defendant during the subsistence of their marriage and that the said properties were Matrimonial property jointly owned by the Petitioner and the Defendant.
 - ii. That, the building erected on Land Parcel No. MaelaNdabibi block 2962 together with the adjoining buildings is matrimonial House the Plaintiff and her child.
 - iii. That, a further declaration be made by this Court for the subdivision of the matrimonial property between the Petitioner Plaintiff and her child on one hand and the Respondent on the other hand. The subdivision of the property be made in such a manner and proportions as this Court may deem fit and just.
 - iv. That, this Court be pleased to order the Respondent to be depositing Kshs 26,400= arising from the Rent collected from the buildings erected on Land Parcel MaelaNdabibi block



2962 per month and Kshs 6,000= which is the net collections earned from Motor Vehicle Registration No. KBM 569J daily pending the Hearing and determination of this case.

- v. That, this Court be pleased to grant the costs of this suit to the Petitioner.
2. While the hearing proceeded with the Petitioner's case, the Respondent failed to present his case or file written submissions following this advocate ceasing from representing him.
 3. The Petitioner presented her evidence and filed her submissions contending that, the matter is unassailable and has high chances of success.
 4. That, the general thrust that is raised in the Supporting Affidavit of the Plaintiff dated 23rd July, 2014 is that she was married to the Defendant since 2005 under Kikuyu Customary Law. They established their matrimonial home in Kasarani area of Naivasha in Nakuru County. During the subsistence of the marriage, they acquired Lands Parcels MaelaNdabibi block 2962 and 1002 in 2008 which were registered in the names of the DefendantRespondent.
 5. That she was operating a shop Business and used to supply food products to Shalimer Flower Growing Farm and from the proceeds she earned she used the same to develop the matrimonial properties and a home was built in MaelaNdabibi block 2962, the same was built by their joint efforts, that is together with the Respondent Defendant, that the Petitioner Plaintiff managed to put up the matrimonial house on the said Plot and they both built some adjoining rooms for renting or leasing and the said plot also in the front face also contained some shops for renting.
 6. That she took one of the front shops from where she continued with the shop business and the matrimonial house was at the rear of the shops. In total, there were Four (4) shops in the front for renting which were being rented at Kshs. 3,000 each per Month, there were eight (8) Rear rooms which were being rented out at Kshs, 1,800- per month per room.
 7. That she was the registered owner of Account No. 053000017211 Family Bank in Naivasha Branch. Most but not all her Business proceeds were being channeled through this Account. Using this Account she sourced for a Loan of Kshs. 525,000 and added a further Kshs. 250,000- which enabled her to purchase Motor Vehicle Registration No. KBM 569J Toyota. The vehicle is registered in her name.
 8. That the aforesaid Vehicle was being used as a Matatu earning Kshs. 6,000- per day and Matrimonial property in Land Parcel MaelaNdabibi block 2962 was also earning Kshs. 26,400- in rent.
 9. That the time that the Petitioner was chased away from the matrimonial home, she had only managed to repay Kshs. 255,494 to cover for the Loan Advanced to her to buy the Vehicle. This is clearly reflected in her Family Bank No. 053000017211 which was paid through her personal Account No. 000893264.
 10. When the Petitioner was chased from the matrimonial home on 28th August, 2013, she left the Respondent having possession of Motor Vehicle KBM 569J running as a Matatu which the RespondentDefendant was driving to date, and he has never accounted for the proceeds earned from the Vehicle.
 11. The Petitioner further states that she also left the Respondent collect the rent amounting to Kshs. 26,400- a month.
 12. The Respondent is required to Account for the money since then to date.
 13. It is also the Petitioner's case that when she was chased by the Respondent, she was left with no earning despite the fact that she was required to repay the Loan. The Respondent sold Land Parcel MaelaNdabibi block 21002 at over Kshs. 450,000-. without her knowledge. The Petitioner had



overriding interest in the said property. The Respondent Defendant never accounted for this money. A search Certificate shows that the Plot was sold to one Stephen Kiarie. The same was registered in the name of Stephen Kiarie Njoroge on 23rd December, 2013.

14. That to prevent the Respondent selling the other property MaelaNdabibi block 2962 the Petitioner lodged a caution.
15. The Plaintiff went with the only issue of the marriage one Charles Muchira born on 8th July, 2014 and who was 8 years at the time of the filling the originating Summons hereof.
16. It is the Petitioner's Submission that the Defendant is using the matrimonial property with one Judy Nyambura whom he brought in the matrimonial home.
17. The Respondent had no good or legal or equitable reasons to sell some of the matrimonial property without the consent of the Petitioner and that the orders sought be granted.
18. The Respondent in reply to the originating Summons opposed the same. The Defendant filed a Replying Affidavit dated 31st July, 2014 in his Reply to the Originating Summons.
19. The Respondent in his Replying Affidavit urged the Court to reject the Plaintiff's Originating Summons in the ground that it does not disclose the provisions of the Law under which the same is brought.
20. The Respondent further averred that the Petitioner has no basis to claim the vehicle since it was released to him and that the Plaintiff is guilty of perjury as she had put an Affidavit in the Criminal Case that they were not married. The Respondent further averred that he had bought the property MaelaNdabibi block 2962 before they got married or before they started cohabitation with the Plaintiff.
21. The Respondent avers in his Replying Affidavit that he repays the Loan of the vehicle, that he is the proprietor of the vehicle that the Petitioner only wants to convert vehicle to her use without any good cause. That he had developed Plot No. MaelaNdabibi block 2962 before he started cohabiting with Plaintiff and the Plot does not form part of the matrimonial property. He further denied that Plot No. MaelaNdabibi block 21002 was matrimonial property. The Defendant said Plot No. 1002 was bought or purchased in before the Defendant got married to the Plaintiff in the year 2000.
22. The Respondent denied that Petitioner was doing Business and has not contributed anything to the properties that the Plaintiff claims.
23. The Petitioner had further filed a further supporting Affidavit to the Originating Summons dated 18th August, 2014. The thrust of the further Supporting Affidavit demonstrates that failure to state the section of the Law of Procedure under which the Originating Summons has been brought to court is not fatal as the same was occasioned by inadvertent error. The same we submit is a procedural technicality that should not make the Petitioner's case fail.
24. That in the further Supporting Affidavit, the Petitioner has clearly demonstrated that the Criminal Case was being controlled by prosecution and that the Affidavit filed therein inadvertently indicated that the PetitionerPlaintiff was not legally married to the Defendant which was not the case.
25. That her further Supporting Affidavit annexed a copy of the OB Report which clearly states that the Petitioner she had been married to the Defendant for 7 years and that Motor Vehicle Registration No. KBM 569J Matatu Town Ace was bought by the Petitioner Plaintiff through her Family Bank Account.



26. That the OB Police Report was made earlier in time than the Affidavit annexed to the Replying Affidavit of the Respondent/Defendant. As such, the Petitioner having reported in the OB that she was legally married to the Defendant could not have come around to deny this fact in the aforesaid Affidavit. That is why she submit that the Affidavit contained an inadvertent error as the Petitioner and Respondent were husband and wife. The OB Report clearly shows that the averment in the Affidavit that Respondent was not the Plaintiffs Husband was an inadvertent error.
27. That going through the issues raised for and against the originating Summons, it is clear that there are matters that are quite clear. Firstly, the Respondent concedes that the Petitioner was his wife and being his wife that the Plaintiff disappeared from the matrimonial home with the couple's child namely Charles Muchira.
28. That the Respondent concedes that they had started living together in January 2005. That the Petitioner was chased away from the Matrimonial home by the Respondent on 28th August, 2013. This was after living together as Husband and wife for Eight (8) years.
29. That it is common ground that Motor Vehicle Registration Number KBM 589J was purchased through or by way of Bank funds. There is no dispute that the vehicle is registered in the name of the Petitioner.
30. It is the Petitioner's submission that, the fact that Land Parcel MaelaNdabibi block 2962 exists and that it is registered in the name of Defendant is not in dispute. However, the contention by the Defendant that the property is not a matrimonial property since it was bought before Defendant started cohabitation with the Plaintiff in 2005 does not hold any water. The Plaintiff clearly stated that the property was bought during the co-existence of the marriage. We had exhibited a Certificate of Official Search dated 24th February, 2014 showing that the Defendant was Registered as the proprietor of Land Parcel MEALANdabibi block 2962 on 2362008. By then the marriage was still coexisting. They had started living together in 2005.
31. Petitioner submits that, she had demonstrated that they had bought Land Parcel MaelaNdabibi block 21002 with the Respondent during the co-existence of their marriage. However, after the Respondent chased the Petitioner from the matrimonial home on 28th August, 2013, the Respondent/Defendant sold the said Plot at Kshs. 450,000 to one Stephen Kiarie Njoroge. We exhibited a Certificate of official Search dated 4th April, 2014 showing that the said Plot was registered in the name of the buyer on 23rd December, 2013 and that the Petitioner did not benefit from the proceeds of sale of Plot No. MaelaNdabibi block 21002 she contends that the proceeds were wrongfully utilized by the Defendant in his own selfish ends in ways unrelated to the welfare of the Petitioner or the matrimonial welfare.
32. That the Petitioner has fully demonstrated that Motor Vehicle Registration Number KBM 569J was registered in the name of the Plaintiff and had annexed a copy of the Log Book in the name of the Petitioner.
33. The aforesaid Motor vehicle was bought at Kshs. 750,000- from one Nicholas Mwanja she evidenced a Family Bank statement Account No. 05300017211 demonstrating a Loan of Kshs 525,000- was disbursed to the Petitioner on 29th June, 2012 and using other funds that were available in the Clients Account, a total sum of Kshs. 665,000= was paid as the Purchase price of the vehicle to Nicholas Mwanja for the Purchaser of MV KBP 569J. The Account in which the Loan for the Purchase of the Vehicle was bought from is not held jointly between the Petitioner and the Respondent. It was an Account owned and operated by the Petitioner.



34. When the Loan repayment process begun, the Petitioner demonstrated that the Loan repayment dues were deducted from the Petitioner's Account 053000017211 to personal Number 000893264 (Asset Finance). And she annexed the asset Finance Account 000893264 which shows the Loan repayment covering the period from 29th June, 2012 to 17th June, 2014.
35. The Petitioner further averred that, after she was chased by the Defendant from the matrimonial home, she was unable to run her shop Business or any other businesses that used to earn her money hence from 28th August, 2013, the Bank was deducting Loan repayment dues from her Account balances and the Bank deducted a total of Kshs. 255,494.55. It is therefore not true that the vehicle was bought with the Respondent's funds and it is not true that the Respondent is the person who repaid the Loan.
36. Though the Respondent denied that the Petitioner was doing any Business that could bring her money, a perusal of the Family Bank statement clearly shows various cheques deposits from Shalimar Flowers self Help Group of various amounts some in excess of Kshs. 137,000= which were regularly paid to the Plaintiff.
37. The Petitioner averred that she was operating a shop Business in shops that they had built in Plot No. MaelaNdabibi block 2962.
38. The Petitioner further averred that, they Developed Plot No. MaelaNdabibi block 2962 in that they elected some buildings thereon. They built a matrimonial house and some adjoining rental room plus the front shops. The Petitioner demonstrated that the Rental rooms and shops were earning about Kshs. 26,400= a month from the proceeds collected from the houses as rent.
39. The Petitioner further demonstrated that the Vehicle KBM 569J was being used as a matatu and the same was earning money in the sum of about Kshs. 6,000- per day. The Plaintiff had sought for the Defendant to Account for the proceeds that he earns from the Rent and from the Vehicle for the period from 28th August, 2013 when she left the matrimonial home to date.
40. That the Defendant denies that Plot No. MaelaNdabibi block 2962 was developed and that it earns income from Rent of up to Kshs. 26,400 a Month or that the vehicle was earning about Kshs. 6000= a day.
41. That, the Respondent denies that the Plaintiff had contributed in any way financially to the properties; that is the purchase of the car or the vehicle, urging the Court to find that the Plaintiff contributed to the purchase of Land Parcel MaelaNdabibi block 2962 and that she further contributed in the developing the same. The Defendant did not deny that on Plot No. MaelaNdabibi block 2962, there is the matrimonial home where the Petitioner used to live in with the Respondent. The Respondent did not raise any objection that on the same shop there are some shops plus some rear rooms that are usually rented out. The Petitioner had demonstrated that she was using one of the front shops to operate her shop which she was forced to abandon when she was chased away.
42. Though the Respondent feebly stated that he did not want to sell any property he conceded to having sold Plot No. MaelaNdabibi block 21002. The Respondent did not make any efforts to state what he did with the proceeds of sale of the aforesaid Plot.
43. That, under Section 2 of the *Matrimonial Property Act*, 2013 provides that contribution means monetary and non-monetary contribution, in the present case, the Petitioner has demonstrated that she contributed to the purchase of the Vehicle Registration No. KHM 569J Toyota. The Petitioner has further demonstration that she used to operate a shop in one of the shops that was built in Land Parcel MaelaNdabibi block 2962. The Petitioner had also a child with the Defendant. As a mother, she is the one who used to care for the child by the time that the Petitioner was chased from the



matrimonial home, the issue of the marriage was about Seven (7) years old. Child care under Section 2 of the *Matrimonial Property Act*, 2013 has been defined as one of the contribution that a party may have contributed in what can be said to be matrimonial property.

44. Under Section 2 of the *Matrimonial Property Act*, 2013, a matrimonial home is defined to mean 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.
45. The Plaintiff had averred that she had established the matrimonial home in the premises that they had built in Plot No. MaelaNdabibi block 2962. The frontage of the premises in the aforesaid building were shops and besides the matrimonial home at the rear of the shops were some adjoining rear rooms which were leased out and they used to bring some proceeds.
46. That therefore that the various shops in Plot No. MaelaNdabibi block 2962 together with the rear rental houses plus the house that is used as a matrimonial home do qualify to be a Matrimonial home or matrimonial property. Under Section 6 of the *Matrimonial Property Act*, 2013, matrimonial property is defined to mean a matrimonial home or homes, household goods and effects in the matrimonial home, any other immovable and movable property, jointly owned and acquired during the subsistence of the marriage.
47. That their marriage co-existed between 2005-2882013. The Plaintiff produced a search Certificate for Plot No. MaelaNdabibi block 2962 showing that the same was registered in the name of the Defendant on 23rd June, 2008 when the marriage was still in co-existence.
48. The Petitioner had averred that on 28th August, 2014 the Defendant had brought to the matrimonial home of the Petitioner another woman with whom the Respondent has been cohabiting with. It was also the contention of the Petitioner that when the Defendant sold Land Parcel or Plot No. MaelaNdabibi block 21002, the proceeds of the said sale were utilized by the woman that the Defendant is cohabiting with and the Defendant himself.
49. The Petitioner averred that by the time that she was chased from the matrimonial home, the Four (4) front shops and the Eight (8) rear rooms in the premises built in Plot No. MaelaNdabibi block 2962 were earning a total of Kshs. 26,400- per month. The vehicle was also earning a total of Kshs. 6,000- per day by the time the Plaintiff was chased from the matrimonial home.
50. Under Article 45 (3) of *the Constitution* of Kenya 2010 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”.
51. The provisions of Section 4 of the *Matrimonial Property Act*, 2013 provides that a married man or a married woman has equal status in marriage to acquire, hold, control and dispose of property whether moveable or immovable. The provisions of this section is reinforced by Article (27(3) of the Kenya Constitution 2010 which provides that:

“Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres”.
52. Going by the foregoing, it is clear that the Court should take into Account of the value of the proceeds that were got after the sale of Land Parcel MaelaNdabibi block 21002 which was sold at Kshs. 480,000- a fact that is not denied by the Defendant. And that this Court, should take into consideration of the proceeds being realized by the property that stands in plot MaelaNdabibi block 2962 which has been



provided as Kshs. 26,400- per Month by the Plaintiff a fact that is not denied by the Plaintiff. That the Court should take into consideration the proceeds the vehicle is earning which the Plaintiff averred to have been Kshs. 6,000- per day by the time that she was chased away from the Matrimonial home on 28th August, 2013.

53. The Court is urged to find that Land Parcels MaelaNdabibi block 2962 and 1002 plus Motor Vehicle Registration No. KEM 569J Toyota were acquired by the joint funds and efforts of the Plaintiff and the Defendant during the subsistence of their marriage hence the same were matrimonial property jointly owned by both the Respondent Plaintiff and the Respondent Defendant on equal basis, urging the Court to make a finding to this effect and make a declaratory orders to that effect.
54. The Court is urged to find that the building erected on Land Parcel MaelaNdabibi block 2962 together with the adjoining building is matrimonial House and or property which should be jointly shared out between the Plaintiff and the Respondent consideration being made for the only issue of the marriage Charles Muchira.
55. That the Petitioner gave evidence in support of her case on 10th December, 2018 and the Plaintiff closed her case. The RespondentDefendant failed to appear in Court to give evidence. On 1st July, 2019, a Consent was entered between both parties for Land Parcel Maela Ndabibi block 2962 and the car be valued. Each party was to file their respective valuation report for purposes of Court to consider the same in settling the matter.
56. The report of the Petitioner is dated 17th January, 2019. The same was prepared by Alphonse Kioko Malii a registered and practicing valuer Registration No. 469. Land Parcel Maela Ndabibi block 2962 was valued at Kshs. 6,456,730 (Kshs. Six Million, Four Hundred and Fifty-Six Thousand, Seven Hundred and Thirty). The report was filed in Court on 18th July, 2022. We urge the Court to consider this valuation report. The report confirms that the plot is developed with a commercial residential low-rise building with shops, single rooms, with a semidetached self-contained unit comprising of a sitting room, dining room, kitchen, bathroom and a bedroom.
57. That the Respondent filed his valuation report of Land Parcel MaelaNdabibi block 2962 which indicated that the market value of the property was Kshs. 4,200,000= (Four Million, Two Hundred Thousand Only) The Petitioner further filed the report of Motor Vehicle Reg. no. KBM 569J Toyota Townace which assessed the vehicle at Kshs. 300,000- (Kshs. Three Hundred Thousand Only). The report was prepared by Leone Motor Assessors Ltd and the same was dated 4th July, 2019.
58. The Court is urged to consider the Three (3) valuation reports. Under Section 12 (1) of the *Matrimonial Property Act*, an Estate or interest in any Matrimonial property shall not during the subsistence of the marriage be alienated in any form without the consent of both spouses. The Respondent sold out Land Parcel Maela Ndabibi block 21002 without the authority or consent of the Petitioner. UNDER Section 8 (1) (A) of the *Matrimonial Property Act* the law provides that any property acquired by the man and the first wife shall be retained by the man and the first wife only. In her case, the property the Petitioner claims were acquired by the Respondent and the Petitioner before the Respondent started living with one Nyambura as a second wife. The 2nd wife in the circumstances should not acquire or interfere with the property that was acquired by the Respondent and the Petitioner.
59. The High Court sitting in Nairobi in MWM Versus JPM (Respondent) Civil Suit No. 43 Of 200905) Family Division, the Court found that she had contributed indirectly and directly in the acquisition of the properties and therefore she was entitled to have a share of the claimed property.



60. That, the Petitioner has brought evidence of her direct contribution to the Vehicle registration No. KBN 569J. She gave evidence that she used to operate a shop. The vehicle was also earning proceeds. At a glance, the Petitioner's Account No. 053000017211 was a busy account. The Petitioner was earning money which was sufficient to service the vehicle's loan and also to contribute to the development of Plot No. MaelaNdabibi block 2962.
61. That, there is evidence that, the Petitioner had her matrimonial home in part of the building in Plot No. MaelaNdabibi block 2962.
62. The Petitioner Plaintiff had one issue. Even after being chased out of the matrimonial home on 28th August, 2013. Four years down the line, the PetitionerPlaintiff is still caring for the issue of the marriage. As a mother, she is expected to have been caring for the issue of the marriage from birth up to when the Petitionerplaintiff was chased from the matrimonial home a period of over 7 years. We urge the Court in our present case to find that the Petitioner Plaintiff had directly and indirectly contributed to the acquisition of the claimed property as was held in the case of MWM vs. JPM cited above
63. In WN vs. MK Civil Appeal No. 203 of 1997, the Court of Appeal held pp 223-224 it was held that the Courts should consider non-monetary contribution of a wife in a home in assessing her contribution to the family property and to put any limitation in assessing non-monetary contribution to a wife would work an injustice to a large number of women in our country where reality of the situation is that paid employment is very hard to come by.
64. In the circumstances the Petitioner urges the court to find that she is entitled to half of the Property claimed on a 50% basis across the board. She further urges the Court to consider the fact that the Respondent has been earning money in terms of rent from the premises in land parcel PLOT NO. MaelaNdabibi block 2962 amounting to over Kshs.26,400 a month and over Kshs. 6,000 per day from the vehicle for the last 31, years. The Petitioner did not benefit from the proceeds of Kshs.480,000- that the Respondent earned after selling PLOT NO. MaelaNdabibi block 21002. We urge the Court to consider the same and pray for the Court to grant the prayers as prayed accordingly.
65. With the Summons largely going undefended and the Respondent failing to adduce evidence, this court shall allow the originating summons dated 23rd July 20214 on the following terms;
 - i. A Declaration is hereby made that the following properties were acquired by the joint funds and efforts of the Plaintiff and the Defendant during the subsistence of their marriage and as such constitutes matrimonial property jointly owned by the Plaintiff and the Defendant:
 - a. Land Parcel NO. MaelaNdabibi block 2962.
 - b. Motor Vehicle Registration NO. KBM 569J
 - ii. THAT the building erected on Land Parcel No. MaelaNdabibi block 2962 together with the adjoining buildings constitutes matrimonial the matrimonial home.
 - iii. A Declaration is hereby made that the for the subdivision of the matrimonial property between the Plaintiff and the Defendant at the Ratio of 50:50.
 - iv. The Defendant shall pay the Plaintiff a global sum of 556, 500- being "mesne profit" arising from the Rent collected from buildings erected on Land Parcel MaelaNdabibi block 2962 and constituting 50% share.
 - v. The Loss of Kshs 6000- per day for 3.5 years is unproven and dismissed.
 - vi. The costs of this suit be borne by the Respondent.



It is So Ordered.

SIGNED, DATED AND DELIVERED AT NAKURU ON THIS 21ST DAY OF NOVEMBER 2025.

MOHOCHI S. M.

JUDGE

