

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT THIKA
MATRIMONIAL PROPERTY CASE NO. 1 OF 2023 (O.S)

MARNIX HUIS IN'T VELD.....
....PETITIONER

VERSUS

FLORENCE NJOKI KANINI.....
RESPONDENT

JUDGMENT

Brief facts

1. The petitioner instituted the suit herein vide Originating Summons dated 29th May 2019 seeking determination that:-
 - a) A declaration that land parcel numbers Kiambu/Gatuanyaga/3157 and Kiambu/Gatuanyaga/527 are matrimonial properties and ought to be shared equally.

2. In opposition to the originating summons, the respondent filed a Replying Affidavit dated 11th September 2019.

3. The matter proceeded by way of viva voce evidence.

The Petitioner's Case

4. PW1, the petitioner testified that he and the respondent contracted a civil marriage on 4th December 2009 and were blessed with two issues. PW1 further testified that their union broke down irretrievably and they filed a divorce cause whereas a decree absolute was issued in September 2018. During the subsistence of their marriage, the petitioner said the parties acquired land parcel L.R. Nos. Kiambu/Gatuanyaga/3157 and 527 which the petitioner testified was funded through loans by his parents both residing abroad. The first loan amounted to 95,000 Euros vide loan agreement dated 19th October 2009 while the second one was of 10,000 Euros. The third loan to the couple was the petitioner's from his brother of 3,000 Euros. The petitioner said that he had repaid the bulk of the loan individually to his parents and the outstanding amount is currently 25,000 Euros. The petitioner further testified that the said parcels of land were registered in the respondent's name to hold in trust for him and their children as he was a foreigner and could not be registered as a proprietor.

5. The petitioner testified that they built their matrimonial home on the said land Kiambu/Gatuanyaga/527 where the respondent lives with the children to date. Further, the petitioner stated that the respondent had signed a

consent stating that she would transfer the land back to his name in the event of a divorce or disagreement in the marriage.

6. The petitioner further testified that he is unable to repay the outstanding debts incurred during the subsistence of their marriage for the benefit of the family. The petitioner said he intends to dispose off his share of the land to repay the debts which includes loans he borrowed from his family and friends.
7. The petitioner testified that after their separation with the respondent, he has been paying school fees for the children and servicing the loan from his parents. He admitted that the renovations to the house and redecorations were done by the respondent after they separated.
8. The petitioner testified that he is still a foreigner and cannot be registered solely in respect of the properties however the respondent by altering the properties is trying to benefit upon the expected division of the matrimonial property. The petitioner testified that the loans ought to be repaid by proceeds from selling the land and further that the respondent ought to pay the balance of the loan from his parents.
9. On cross examination, the petitioner testified that the loan was to be repaid back in full by 22/09/2022 in instalments of 250 Euros but this plan was not achieved. The

petitioner stated that the three loans were given to the parties jointly for the benefit of the family.

The Respondent's Case

10. The respondent, DW1 relied on her Replying Affidavit dated 11th September 2019 and testified that she and the petitioner signed a loan agreement on 19th October 2009 where they would take up a loan of 50,000 Euros from the petitioner's parents. The respondent testified that the applicant, one Andrew Gachagua Thuku and the respondent signed a sale agreement for the purchase of land parcels Kiambu/Gatuanyaga/527 and 528 at the total purchase price of Kshs. 7,624,270/-. It was agreed under Clause 5 of the Sale Agreement that land parcel number Kiambu/Gatuanyaga/527 would be transferred to her and Kiambu/Gatuanyaga/3157 (formerly known as Kiambu/Gatuanyaga/528) shall be transferred to the purchasers in three shares that is she would get 0.3 hectares, Macheo's Children Centre would get 1.2 hectares and Andrew Gachagua Thuku would get 1.2 hectares.

11. DW1 testified that on 24th February 2010, the said Andrew Gachagua Thuku through his appointed attorney and wife Grace Wangui Gachagua disclaimed his interest over land parcel known as Kiambu/Gatuanyaga/528 thus forcing her to take a soft loan of Kshs. 250,000/- to pay the outstanding stamp duty amount and the surveyor's fees. Thus LR No. Kiambu/Gatuanyaga/528 was sub

divided into two portions, LR No. Kiambu/Gatuanyaga/3157 in her name and in trust of their children and Kiambu/Gatuanyaga/3158 in the name of Macheo Children Centre, which title the petitioner is in possession of. The respondent admits that the matrimonial home is built on LR No. Kiambu/Gatuanyaga/527. Further, on the said property there is a guest house built by their mutual friend one Jannie Meijer Martens a Dutch national who often stays in the guest house when she visits Kenya.

12. The respondent further testified that upon agreement with the petitioner she dug a grave to bury her niece who died on 16th November 2013 on the same parcel of land.
13. The respondent stated that although she signed the consent, the said consent was not signed or witnessed by an advocate as provided for. the respondent further stated that as they both signed the loan agreement, they both owe the amounts in the agreement and thus she is ready and willing to pay back the debt.
14. The respondent testified that according to Clause 4 of the Loan Agreement part of the debt in the amount of 23,000 Euros was to be repaid from the petitioner's dividends as a shareholder in their family company known as HHV Consulting BV. Further in Clause 6, parties were meant to have an agreement on how to repay the loan in the event of divorce.

15. The respondent stated that since the acquisition of the properties, she has constructed a dam on the property as well as dug a borehole, set up tanks for purposes of drip irrigation to assist in her farming activities. Furthermore, she took a loan from an investor one Craig Williams Anderson for the sum of USD 62,950 and signed a loan agreement dated 1st September 2018.
16. The respondent stated that the petitioner purchased a house during the subsistence of their marriage in an estate called Caren Gardens Estate near Ndarugu Juja, where he currently resides.
17. The respondent proposed that the property be shared out at the rate of 80% in her favour and 20% in favour of the petitioner. The respondent stated that she has no other source of income apart from farming and that she has to travel abroad to see the children.
18. The respondent testified that she owed 15,000 Euros for the loan of march 2012 and she is ready and willing to pay the same provided that she is given new loan terms.
19. On cross examination, the respondent stated that she had full control of the land and that she did not disclose the income she generated from the land. She further stated that she did not share any of the income from the property with the petitioner.

20. Parties agreed to dispose of the suit by way of written submissions.

The Petitioner's Submissions

21. The petitioner refers to **Section 6(1)(a) of the Matrimonial Property Act** and submits that it is not in dispute that the suit properties were acquired during the subsistence of the marriage. Further, the sale agreement listed both parties as purchasers thus the properties meet the legal threshold of matrimonial property under Section 6 of the Act.

22. The petitioner submits that the property was financed entirely through loans advanced by his parents, brother and mutual friends and although the respondent signed the loan agreements, she never made any repayments nor did she make any contribution at the time of the purchase. The petitioner refers to **Section 7 of the Matrimonial Property Act** and the case of **Echaria vs Echaria** (no citation given) and submits that the respondent failed to meet the evidentiary burden and her claim rests on occupation and post separation developments not contribution to acquisition.

23. The petitioner argues that repayment of matrimonial debts entitles the paying spouse to an adjustment in division. A just division must take into account not only the equity in the property but also the liabilities incurred to acquire it. To support his contentions, the petitioner

refers to the case of **Re Marriage of Epstein (1979) 24 Cal.3d 76.**

24. The petitioner further argues that he was not aware when the respondent unilaterally transferred the title into her sole name which violated the joint intention expressed in the original sale agreement. The petitioner relies on **Section 14(a) of the Matrimonial Property Act** and submits that the unilateral registration by the respondent should not affect the legal presumption of joint beneficial ownership.

25. Relying on the case of **JKO vs CKO [2023] KECA 115**, the petitioner argues that unilateral enhancements to matrimonial property do not justify unequal division in the absence of agreement or participation by the excluded spouse as he was denied access to the property in 2015 and has been unable to verify or assess the nature, extent or necessity of the improvements.

26. The petitioner acknowledges that the court in its earlier proceedings permitted the respondent to farm the suit land for the purposes of supporting herself but the order was custodial and welfare based granted in the interim to address subsistence needs. However, such permission was never intended to extinguish or override his beneficial ownership rights nor did it confer any authority upon the respondent to carry out permanent developments or exclude him from decision making. The petitioner submits that he has relocated to the

Netherlands where he currently resides with the children and thus he requires access to the proceeds of the matrimonial property in order to secure a stable home for himself and his children abroad.

27. The petitioner argues that the respondent's claim for 80% of the property value without due regard to the unpaid loans is both legally and morally untenable. The petitioner proposes that the current value of the property be established then deduct all the outstanding liabilities to its acquisition and then divide the remaining net equity equally. The petitioner further submits that in light of the outstanding loan of 38,200 Euros, the court should direct that only a portion of the matrimonial property sufficient to satisfy the debt be sold with the proceeds applied exclusively towards clearing the balance. The remainder of the property should then be divided equally between the parties based on the equivalent market value in Kenya Shillings.

The Respondent's Submissions

28. The respondent submits that the sum of 30,000 Euros advanced to her and the petitioner jointly on 6th March 2012 is not in dispute to which she affirms her willingness to honour and repay 15,000 Euros. The respondent submits that that obligation is distinct and severable from the further and wholly unsubstantiated claim by the petitioner of additional payments amounting to 108,009 Euros and 68,800 Euros which he has failed to prove contrary to **Sections 107 - 109 of the Evidence**

Act and as was held in the Court of Appeal decision in **Koinange vs Koinange [1986] KLR 23.**

29. The respondent further relies on the case of **Savings & Loan Kenya Ltd vs Mayfair Holdings Ltd [2012] eKLR** and submits that the doctrine of privity of contract prohibits enforcement of a loan agreement by a party who is not the lender. Thus the petitioner herein is not the lender in respect of the facility of 30,000 Euros and thus lacks the locus standi to unilaterally enforce repayment or seek recovery.

30. The respondent submits that land parcel numbers 527 and 3157 do not meet the threshold of matrimonial property as envisaged under Section 6 of the Matrimonial Property Act as they are solely registered in her name and developed during the marriage without any direct involvement or participation by the petitioner. To support her contentions, the respondent refers to the cases of **P.K.W vs J.K.K [2020] eKLR** and **T.M.M vs J.I.L [2014] eKLR**. The respondent submits that the properties were acquired during the subsistence of the marriage but the developments were carried out solely by herself.

31. The respondent argues that the petitioner has failed to disclose the following assets LR No. Kiambu/Gatuanyaga/3158; an additional 7 acres currently operated by Macheo's Children's Home; Caren Garden Juja, a palatial residence in Netherlands where the petitioner resides with the minors, corporate

shareholdings in a Dutch family owned company and despite holding sole directorship and exclusive managerial control of Macheo Children's Home, the petitioner has failed to disclose or account for these assets.

32. The respondent refers to the cases of **MWN vs FWN [2015] eKLR**; **Twahir vs Mbwana [2008] KLR** and **RGW vs EKW [2019] eKLR** and submits that where a company is under one party's exclusive control and used to defeat equitable claims, it cannot be relied upon to escape matrimonial scrutiny. Thus the petitioner's attempt to exclude Macheo held land on the basis of registration is legally unsustainable and equitably unjust.

33. The respondent argues that she is entitled to exclusive ownership, occupation and beneficial use of the suit properties based on her direct, verifiable and substantial contributions to their acquisition and development. The respondent submits that she paid for LR No. Kiambu/Gatuanyaga/527 and 3157 from her own account including all associated costs such as stamp duty, surveyor fees, legal fees and transfer costs. The resulting sub division left LR No. 3157 under her name and LR No. 3158 was registered under Macheo Children's Home signed by the petitioner where he is the sole director and has full control. the respondent submits that she then developed the suit properties engaging in full time farming and the petitioner has not presented any credible evidence of participation in the development of the suit properties.

34. Relying on the cases of **PKM vs MSA [2018] eKLR** and **ENN vs SNK [2015] eKLR**, the respondent argues that the petitioner has not provided any sufficient or independent verifiable evidence to demonstrate any contribution to the properties whether monetary or non monetary. The respondent submits that the suit properties are lawfully registered in her names and registration remains prima facie proof of ownership pursuant to **Section 26(1) of the Land Registration Act, 2012**.
35. The respondent submits that the suit properties have been her primary source of income facilitating her to travel abroad to see her children. Thus, the proposed sale would violate her parental rights and obligations but also the constitutional imperative under **Article 53(2) of the Constitution** to prioritize the best interests of the child.
36. The respondent relies on the case of **Mwangi & Another vs Mwangi [1986] KLR 328** and submits that where one party contributes to the acquisition, development or enhancement of property, equity will impose a constructive trust to prevent unjust enrichment or denial of justice.
37. The respondent relies on **Section 3(3) of the law of Contract** and the case of **Eldo City Limited vs Corn Products Kenya Limited & Another [2013] eKLR** and submits that the handwritten letter alleged to be a consent signed by both parties agreeing to transfer the

suit properties to the petitioner does not meet the threshold to constitute a binding enforceable contract. To support her contentions, the respondent relies on the cases of **Peter Mburu Echaria vs Priscilla Njeri Echaria [2007] eKLR**; **Gibson vs Manchester City Council [1979] 1 WLR 294** and **Re Estate of the late Gedion Manthi Nzioka (Deceased) [2015] eKLR**.

38. Relying on the case of **PNN vs ZWN [2017] eKLR**, the respondent urges the court to evaluate the loan facility of USD 62,950 advanced to her and 30,000 Euros when determining the just and equitable distribution of the suit properties.

39. The petitioner filed Supplementary Submissions dated 18th August 2025 and submits that the respondent's claim to offset an alleged post separation debt against matrimonial property is untenable. There is no joint charge registered against the suit property; no cogent proof of a binding joint liability and the alleged borrowing cannot diminish his pre existing beneficial interest.

40. The petitioner argues that the respondent's attempts to draw into the current cause properties of third parties or entities are legally untenable. Corporate and institutional property is distinct from that of members or supporters.

41. The petitioner submits that he continues to abide by the proposal made by the respondent dated 8th October

2015 granting him 7 acres while she retained 2.6 acres inclusive of the matrimonial home which represents a fair allocation balancing subsistence and debt settlement. The petitioner argues that the respondent's submissions advance numerous factual assertions that were neither pleaded with particularity nor proved at the hearing and ought to be disregarded.

Issues for determination

42. The main issues for determination are:-

- a) Whether the properties LR No. Kiambu/Gatuanyaga/527 and LR No. Kiambu/Gatuanyaga/3157 constitute matrimonial properties.
- b) Whether the respondent contributed towards the acquisition and development of the said properties.
- c) Whether the respondent is entitled to a share of the said properties and in what proportion.

The Law

Whether the properties LR No. Kiambu/Gatuanyaga/527 and 3157 constitute matrimonial properties

43. **Section 6 of the Matrimonial Property Act 2013**, defines matrimonial property to include the matrimonial home or homes, any household goods in the home or

homes or any other property jointly owned and acquired during the subsistence of the marriage.

44. Basically, 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.

45. In the instant case, the marriage between the parties herein commenced on 4th December 2009 vide a civil marriage. The parties stayed together as husband and wife until 2018 when their marriage was dissolved. The *decree nisi* was issued on 24th July 2018 and made absolute on 24th August 2018.

46. From the pleadings and testimonies of both parties, the petitioner and the respondent obtained a loan vide loan agreement dated 19th October 2009 for 50,000 Euros which the parties used to purchase land parcels LR No. Kiambu/Gatuanyaga/527 and 528 vide Sale Agreement dated 8th December 2009. It is further not in dispute that the petitioner has been paying back the loan by himself and the loan is outstanding at 30,000 Euros vide loan agreement dated 6th March 2012. The respondent has confirmed that the loan is outstanding and has expressed her willingness to pay back the loan at an amount of 15,000 Euros. It is evident that the suit properties were purchased during the subsistence of the marriage vide a loan obtained by the petitioner's parents. The court has

noted that the respondent's pleadings and testimony confirm the same position however in her submissions, she alleges to have purchased the suit properties using her own funds. It is noteworthy that submissions cannot be taken as evidence and new facts cannot be introduced in submissions. That notwithstanding, all the documentary evidence supports the fact that the petitioner purchased the suit properties using money that he loaned from his parents. Therefore the land parcels LR No. Kiambu/Gatuanyaga/527 and 3157 (formerly known as LR. No. Kiambu/Gatuanyaga/528) constitute matrimonial property.

47. The respondent has further argued that the petitioner has not fully disclosed assets that he obtained which fall under the category of matrimonial property. These include LR. No. Kiambu/Gatuanyaga/3158, an additional 7 acres operated and controlled by Macheo Children's Home, Caren Garden Juja, a palatial residence in the Netherlands, income from Macheo Children's Home and corporate shareholding in a Dutch family owned company. The petitioner testified after they separated he rented a house at Ngoingwa in Thika and later moved to his friend's house in Karen. He who alleges must prove and the onus is upon the respondent to show that the properties she speaks of belong to the petitioner and were obtained during the subsistence of the marriage. From the record, the respondent has not produced any title deeds or documentary evidence to support her contentions. It can

be discerned that Macheo Children's Home is a non government organization which is situated on LR No. Kiambu/Gatuanyaga/3158. Being a non government organization, it is not a party to the proceedings herein and further it is a legal separate entity from the petitioner and therefore the land it sits on or the 7 acres under its operation cannot be subjected to constitute matrimonial property. Furthermore, the properties and shareholding in the Netherlands cannot be dealt with by this court as they are not within the jurisdiction of this court. That notwithstanding, the respondent does not have any proof of the items she claims are matrimonial property and as such they cannot be said to constitute matrimonial property. From the evidence before the court land parcels LR No. Kiambu/Gatuanyaga/527 and 3157 are the only properties that constitute matrimonial property.

48. **Section 10 of the Matrimonial Property Act** provides for spousal liability. It provides:-

1) Any liability incurred by a spouse before the marriage and relating to the property shall, after marriage, remain the liability of the spouse who incurred it.

2) Despite subsection (1), any liability that was reasonably and justifiably incurred shall, if the property becomes matrimonial property be equally shared by the spouses, unless they otherwise agree.

3) Parties to a marriage shall share equally any-

a) Liability incurred during the subsistence of the marriage for the benefit of the marriage;

or

b) Reasonable and justifiable expense incurred for the benefit of the marriage.

49. It is evident that the loan of 50,000 Euros was obtained during the subsistence of the marriage for the benefit of both parties this making it a spousal liability. It follows that the petitioner and the respondent ought to share the said liability equally. The record shows that the petitioner has been paying back the loan solely and as it stands the loan is owing in the sum of 30,000 Euros which the respondent has stated that she is willing and ready to pay.

50. The petitioner further testified that he got a loan of 10,000 Euros from his friend and his wife. Another 3,000 Euros was borrowed from his brother according to the petitioner. Although the respondent denies the loans, she produced e-mails, dated 2nd July 2019 showing that the petitioner's brother gave them a loan to purchase a motor vehicle make vitz. The email further reads that the parties mutually consented and agreed to have the petitioner's brother give them a loan to buy the motor vehicle. In that regard, it is my considered view that the loan of 3,000 Euros has been admitted by both parties and is on record

of both parties. The petitioner however did not produce any documents to show the loan of 10,000 Euros from his friend and wife. However, I find that the loan of 3,000 Euros has been proved to be spousal liability and ought to be shared equally.

Whether the respondent contributed towards the acquisition and development of the suit properties.

51. The Matrimonial property Act under **Section 7** provides:-

Subject to Section 6(3), ownership of 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.

52. The law therefore provides that in the event of divorce, the matrimonial property is divided between the spouses according to the contribution of each spouse.

53. What then amounts to contribution? **Section 2** of the Act defines “contribution” as monetary and non-monetary 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.

54. The Court of Appeal enunciated this principle in the case of **Civil Appeal No. 142 of 2018 in C.W.M. vs J.P.M [2017] eKLR:-**

“....parties are of equal worth and human dignity, whatever their station in life. To the issue before us, it is obvious the appellant having being married for 18 years made some contribution to the family of the respondent at the time of such overture. In our view, that contribution, be it domestic work and management of the matrimonial home, childcare or companionship falls within the definition of contribution under the Act.”

55. From the record, the respondent testified that she facilitated the sub division and transfer process of the suit properties solely. The petitioner did not refute the said evidence nor did he offer any evidence to the contrary. To support her contentions, the respondent produced receipts showing the outstanding stamp duty and surveyor's costs paid by her solely during the sub-division of their land. The court also notes that the payments were made in the year 2012 and 2015 and the sale agreement was entered into in the year 2009.

56. It is further not in dispute that the petitioner paid the school fees of the children singlehandedly during and after the marriage. It can be discerned from the evidence that

the respondent took care of the children and both parties raised them. Further, the respondent testified that she was working until 2012 when she went into farming and thus it may be deduced that she was looking after the children and taking care of the home after she left formal employment. The case of **White vs White (200) UKHL 54** is instructive on the issue of non-monetary contributions. The court alluded to the greater awareness of the value of non-financial contributions to the welfare of the family, and the increased recognition that, by being a house wife and looking after young children, a wife may lose forever the opportunity to acquire and develop her own money to contribute to purchase of property for the family. But her role of being a mother and caring for both her husband and children is a critical role in the family that cannot be underestimated. The respondent therefore contributed non-monetarily to the acquisition of the matrimonial properties LR. No. Kiambu/Gatuanyaga/527 and 3157. When she began carrying out farming activities on the parcels of land, she contributed monetarily by paying for the transfer and survey processes of the land parcels. By taking care of the matrimonial home and farming on the suit properties the respondent contributed monetarily to the family property related expenses.

57. The respondent has further argued that the court ought to take into consideration the infrastructural upgrades and agricultural developments she made to the

suit properties using a loan advanced to her by one Craig Anderson for a sum of USD 62,950. I have perused the record and noted that the respondent entered into the agreement with one Craig Williams Anderson on 1st September 2018 for a sum of USD 62,950. Both parties testified that they were separated in the year 2015 and the petitioner was denied access when he went to the suit properties. It is therefore evident that the loan agreement was entered into by the respondent solely and with no knowledge by the petitioner or his consent. The loan agreement in Clause 2 is clear that the respondent was solely responsible for paying back the loan. Therefore it is clear that the said developments on the suit properties were carried out without the knowledge or consent of the petitioner and were done solely by the respondent. It is evident that the income raised from the farming after separation of the parties was used solely by the respondent. The petitioner on the other hand did not contribute to the farming activities.

Whether the respondent is entitled to a share of the said properties and in what proportion

58. **Section 9 and 14 of the Matrimonial Property Act** and **Article 45** of the Constitution are instructive herein.

59. **Section 9 of the Matrimonial Property Act** provides:-

Where one spouse acquires property before or during the marriage and the property acquired during the marriage does not become matrimonial property, but the spouse makes a contribution towards the improvement of the property, the spouse who makes a contribution acquires a beneficial interest in the property equal to the contribution made.

60. There is a presumption of law, **Section 14 of the Matrimonial Property Act** 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 interest in the matrimonial property are equal.

61. The Constitution of Kenya 2010 under **Article 45(3)** states that:-

Parties to a marriage are entitled to equal rights at the time of marriage, during the marriage and at the dissolution of marriage.

62. This principle is echoed by **Section 3(2) of the Marriage Act** and further recognized by the Court of Appeal in the case of **Agnes Nanjala William vs Jacob**

Petrus Vander Goes No. 127 of 2011 (UR) where the Court of Appeal observed that Article 45(3) of the Constitution gives parties to a marriage equal rights before, during and after the marriage ends.

63. In my view, the respondent has established that she contributed non-monetarily and monetarily towards the acquisition of the suit properties whereas the petitioner bought the suit properties through a loan advanced to both parties by their parents. And which is not yet fully paid but remain a responsibility of both parties. The parties were in agreement that the petitioner solely paid school fees for the children and maintained the respondent and the children financially. Thus, even though the respondent registered LR. No. Kiambu/Gatuanyaga/3157 in her name solely, the applicant has given sufficient evidence to support the fact that she holds the same in trust for the petitioner. It is not disputed that both suit properties were purchased through a loan obtained from the petitioner's parents and that the respondent is ready and willing to settle her part of the debt. In distributing the property this court will take the loan into consideration. On perusal of the record, petitioner is of the opinion that the property be distributed as per the respondent's offer vide letter dated 8th October 2015 where the respondent transfers 7 acres to the petitioner and retains 2.6 acres which the matrimonial house sits or alternatively the suit properties be valued, the loan to be repaid to his parents and then the

remaining proceeds be divided equally between the parties. The respondent on the other hand states that the property ought to be distributed at the rate of 80% in her favour to 20% for the petitioner.

64. It is noted that the petitioner has paid part of the loan advanced to both parties and exceeded his half portion as per the agreement. The respondent is yet to pay her part but has indicated her willingness to pay. The parents gave loan of 50 Euros which is admitted by both parties and which funds were used to buy the land parcels which became their matrimonial properties L.R. Kiambu/Gatuanyaga/527 and Kiambu Gatuanyaga/3157 both registered in the name of the respondent.

65. The respondent described her non-financial contribution whereas she looked after the family home, farming, brought up and cared for the children. During the subsistence of the marriage the respondent cared for the petitioner as her husband which contribution cannot be overlooked. The parties separated and the respondent solely looked after the children for years before the petitioner was granted legal custody of the children and took them to Denmark where he resides with them.

66. It is noted that although the petitioner in his pleadings sought orders for equal sharing of the matrimonial properties, he later departed from that

position and seemed to claim a little more for himself due to the fact that he has serviced the loan for purchase of the land parcels solely. This court will take all these issues into consideration.

67. In my considered view, the contribution of the parties in acquiring the properties ought to be assessed at 60% for the petitioner and 40% for the respondent. However, the issue of the liabilities of debts amounting to 53,000 Euros ought to be paid as the properties are shared out. The person that is best suited to be entrusted with the loan repayment is the petitioner due to the logistics that may be involved.

68. I therefore make the following orders: -

- a) That one (1) acre out of Kiambu/3157 Gatuanyaga/3157 shall be sold by the petitioner to clear all the outstanding and unpaid debts plus costs incidental thereto which will include the amounts he has already cleared solely. Alternatively, the petitioner has the option of retaining one acre and paying off the loan from his own funds.
- b) That the petitioner shall take six (6) acres out of L.R. Kiambu/Gatuanyaga/3157 as his share.

c) The respondent shall take the parcel where the matrimonial home sits L.R. Kiambu/Gatuanyaga/measuring 2.6 acres as her 40% share.

69. Being a matrimonial suit, each party shall bear its own costs.

70. It is hereby so ordered.

JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 13TH DAY OF NOVEMBER 2025.

F. MUCHEMI

JUDGE