



**PKK v MCK (Matrimonial Cause E012 of 2024)  
[2025] KEHC 16953 (KLR) (13 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 16953 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
MATRIMONIAL CAUSE E012 OF 2024  
FN MUCHEMI, J  
NOVEMBER 13, 2025**

**BETWEEN**

**PKK ..... PETITIONER**

**AND**

**MCK ..... RESPONDENT**

**JUDGMENT**

1. The petitioner instituted this suit vide Originating Summons dated 9<sup>th</sup> August 2024 seeking determination that:-
  - a. A declaration that Plot Number XXX Phase 1 part 1 [Particulars Withheld] Limited is matrimonial property;
  - b. The said suit property be valued and sold and the net proceeds be divided equally between the parties;
  - c. Parties agree on a joint private valuer to carry out the said valuation exercise and in default of such an agreement the petitioner be at liberty to appoint a private valuer to undertake the said valuation exercise.
2. In opposition to the originating summons, the respondent filed a Replying Affidavit dated 9<sup>th</sup> December 2024.
3. The matter proceeded by viva voce evidence.

**The Petitioner’s Case**

4. PW1, the petitioner relied on his sworn affidavits dated 9<sup>th</sup> August 2024 and 19<sup>th</sup> October 2024 and testified that he and the respondent got married on 6<sup>th</sup> September 1994 at St. [Particulars Withheld] Church Thika and their union was blessed with four issues. On 2<sup>nd</sup> December 2005, the petitioner



states that he bought land parcel Plot No. 1 Phase 1 part 1 [Particulars Withheld] Company Limited for Kshs. 115,000/- which amount he withdrew from Equity Bank Account No. 00701XXX and registered the land under the joint names of the parties.

5. Due to matrimonial differences, the petitioner testified that he left the matrimonial home in the year 2012. During the intervening period after the separation, the respondent commenced a children maintenance cause against him being Children Case No. 163 of 2012 Thika. By a consent order recorded in court dated 7<sup>th</sup> August 2013, the parties agreed and adopted as an order of the court that the matrimonial house built by the parties on Plot No. 1 Phase 1 part 1 [Particulars Withheld] Company Limited be sold at the current market value and the proceeds thereof be shared equally between the parties.
6. The petitioner further testified that they put on hold the sale of the matrimonial house as the children were of tender age and they decided not to destabilize them in terms of relocation. The respondent then moved the court in Divorce Cause No. 27 of 2016 Thika thus dissolving the marriage between them vide a decree absolute issued on 7<sup>th</sup> February 2018.
7. The petitioner testified that parties are bound by the said order of the court and further the said consent order has never been reviewed, set aside or vacated by the court nor was there any appeal preferred by any of the parties.
8. The petitioner further stated that both parties contributed to the constructions of the suit property and thus the issue of contribution of each parties is of no material relevance to the proceedings. Furthermore, the petitioner testified that he is the one who took the loan to construct the house and not the respondent. Further, that the respondent paid for electricity expenses of Kshs. 35,000/-. The petitioner stated that there is no nexus of the purported loans that the respondent took with the construction of the suit property. Additionally, the petitioner testified that he paid school fees for his children and maintained them as they grew up.
9. The petitioner testified that the property Juja South referred by the respondent is where he currently resides and the same is under the name of JWM whereas the Gatiiguru property was acquired in 2019.
10. On cross examination, the petitioner testified that the respondent bought motor vehicle registration number KAS XXXF which he used to go to work.
11. The petitioner testified that he lives on the property in Juja South with his partner Jane Mundia and their two children however the property is registered in her name.

### **The Respondent's Case**

12. The respondent, (DW1) relied on her Replying Affidavit dated 9<sup>th</sup> December 2020 and stated that she and the petitioner agreed to buy the suit property in December 2005 whereas the petitioner took a loan and purchased the land at Kshs. 100,000/- where they built their matrimonial home. In April 2006, the petitioner sold his car and they agreed that she would take a loan and buy another car. She then bought motor vehicle registration number KAS XXXF at Kshs. 375,000/- through a withdrawal of Kshs. 390,000/- to pay for the car and its insurance. The car was primarily used by the petitioner for commuting to work as she used public transport to work.
13. The respondent testified that the construction of their matrimonial home began in September 2006 when the petitioner took a loan to lay the foundation of the house. In the year 2007, the respondent said she took a loan from ABSA Bank and completed the foundation building it up to lintel level. In 2009, the respondent stated that she gave the petitioner her ATM Card to withdraw Kshs. 50,000/- to purchase timber and arrange for transport from Karatina and on 26<sup>th</sup> August 2009; the respondent



- said she took a loan of Kshs. 940,000/- from Equity Bank and paid Kshs. 729,569 via cheque on 27<sup>th</sup> August 2009 to settle the outstanding balance with ABSA Bank for the construction of the home. The petitioner topped up his loan and completed the roofing, installation of windows and other essential works and they began living in the house in October 2009.
14. The respondent stated that she was interdicted in September 2009 from her job and she had no salary for the entire year but she continued to make financial contributions to the home from her savings and loans. In December 2009, the respondent said she paid Kshs. 35,000/- to Kenya Power for power connection to the house using the petitioner's name to open the account.
  15. The respondent stated that in 2010, she took another loan of Kshs. 73,000/- from Family Bank and another one in 2011 of Kshs. 100,000/- to continue building the house which included plastering, laying the floor and finishing the kitchen, dinning room and the fourth bedroom. Furthermore, the respondent stated that she sold the motor vehicle registration number KAS XXXF in 2011 as she was unable to repay the loan. The petitioner topped up his loan further in 2011 and bought a motor vehicle registration number KBE XXX which was used by the family and left with it when they parted ways in 2012.
  16. The respondent stated that she used her earnings from part time lecturing to fund the home construction with little support from the petitioner. She further added that she was forced to vacate the matrimonial home in January 2012 forcing her to pay rent. During the period that she vacated the home, the respondent stated that the petitioner neglected his responsibilities towards their children thus forcing her solely to maintain the children financially.
  17. The respondent stated that the consent order in the Children Case No. 163 of 2012 was not an act of genuine concern or fairness as the petitioner was employed and possessed other properties yet he chose to sacrifice the matrimonial home which was the only stable residence for the children. Furthermore, the respondent stated that she did not have alternative options as she was in a vulnerable position and had no means to prevent the sale of the property which was the only home the children knew.
  18. The respondent testified that over 11 years have passed since the consent order was recorded and over that period she has been solely responsible for maintaining and repairing the home ensuring it was habitable.
  19. The respondent stated that the loan she took on 26<sup>th</sup> August 2009 is still outstanding and despite her financial difficulties she has been unable to repay it as she has no source of income since December 2012. As of 25<sup>th</sup> October 2013, the outstanding balance stood at Kshs. 1,012,488.08/-.
  20. The respondent testified that the petitioner owns other properties in Juja South and Gatiiguru area near Kilimambogo and they ought to be included as matrimonial properties. The same ought to be sold and the proceeds divided equally between the parties.
  21. The respondent argued that contribution to matrimonial property include companionship which includes emotional and physical support between spouses however during the course of their marriage the petitioner neglected his responsibilities towards their children and subjected her to physical, emotional, financial and verbal abuse.
  22. On cross examination, the respondent said that she was interdicted in 2009 and later sacked by Teacher Service Commission (TSC). She further stated that she started on her Masters Degree course in 2004 and graduated in 2009. She said she paid school fees for herself by taking out loans from Muhiga Sacco. The respondent stated that she took the motor vehicle in 2010 and sold it after paying the loan for her mother's medical bill. The respondent stated that she stopped working the year 2013.



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

### **The Petitioner's Submissions**

24. The petitioner refers to the case of *The Standard Group Limited t/a Kenya Television Network & 2 Others Keitany (Civil Appeal 187 of 2020) [2022] KEHC 15514 (KLR) (CIV) (17 November 2022) (Ruling)* and submits that the respondent has not demonstrated any vitiating factors to warrant the setting aside of the consent entered in Children's Case No. 163 of 2012 Thika. Further, the respondent was represented by counsel hence she was equipped with independent legal advice. That notwithstanding, the respondent has never moved the court to have the consent set aside or varied.
25. The petitioner submits that the property in Juja South estate was allocated as part of the JKUAT Staff Housing Project Kalimoni and the Certificate of Plot Allocation is in the name of JWM who is his partner and not a party to the instant proceedings. Thus, the said property cannot be said to form part of the matrimonial property. The petitioner further submits that he acquired the property in Gatiiguru area near Kilimambogo in the year 2018 yet the decree nisi was made absolute on 7<sup>th</sup> February 2018. To support his contentions, the petitioner relies on Section 6 of the *Matrimonial Property Act* and the cases of *ZJN vs CNN (Matrimonial Cause 2 of 2020)* and *IC vs SS (Matrimonial Cause 01 of 2021) [2024] KEHC 3316 (KLR) (9 April 2024) (Judgment)* and submits that the respondent has not established any contribution towards the property in Juja South Estate and Gatiiguru area near Kilimambogo nor has she shown that the said properties were acquired during the subsistence of the marriage.
26. Relying on the cases of *Joseph Ombogi Ongetoto vs Martha Bosibori Ogentoto [2023] eKLR* and *AWM vs JGK [2021] eKLR*, the petitioner submits that at the time of acquiring the properties in Juja South Estate and Gatiiguru area near Kilimambogo, he was not enjoying the companionship of the respondent as their relationship had already gone haywire. Further, although the respondent testified to having taken some loans to finance her education, there is no nexus between her education and the contributions she made which merit her a share in the said properties. The petitioner submits that he has been taking care of the needs of the children since the year 2012.
27. The petitioner argues that the Equity Bank statements that the respondent produced only show that she paid money severally to Victoria Synergy Enterprises and not for building materials as she claims without receipts showing so from Victoria Synergy Enterprises.

### **The Respondent's Submissions**

28. The respondent relies on the cases of *Board of Trustees National Social Security Fund vs Michael Mwalo [2015] eKLR* and *Kenya Shell Ltd vs Kobil Petroleum Ltd [2006] eKLR* and submits that the court ought not to enforce the consent order dated 7<sup>th</sup> August 2013 as it is against public policy. Public policy prohibits courts from enforcing agreements that undermine justice, equity or constitutional values. The respondent argues that the petitioner has since established another family and resides elsewhere and he seeks to enforce a consent that would deprive her of the only home she has for herself and the children. The respondent further relies on the case of *Dhiman vs Shah (Civil appeal E380 of 2023) [2025] KECA 1264 (KLR)* and submits that the consent arose out of a situation marked by significant procedural and substantive unconscionability whereby she was financially strained, raising four children alone and had been removed from the matrimonial home. Further, the petitioner has not lived or contributed to the suit property since separation thus to enforce the consent would allow the petitioner to benefit from property that he abandoned while she made it habitable.



29. The respondent further submits that the purpose behind the consent has long since lapsed as the parties sought to liquidate the property to support the children at a time when they were in school and dependent. That financial need was not met as the property was never sold and the children attained age of majority.
30. The respondent submits that the petitioner has not come to the court with clean hands as he has waited ten years since the children attained the age of majority to enforce the consent. Thus the delay is unjustified and inequitable. To support her contentions, the respondent relies on the cases of Abigail Barma vs Mwangi Theuri ELC No. 393 of 2013 and Court of Appeal Case No. 16 of 2012 Nairobi (Civil Application).
31. The respondent refers to Section 2 and 7 of the *Matrimonial Property Act* and submits that the properties in Juja South Estate and Gatiiguru area near Kilimambogo form part of matrimonial property as they were acquired during the subsistence of their marriage. The respondent argues that the petitioner has presented documents that are insufficient as the certificate of plot allocation for the Juja property bears no date and bears the name of JWM, his current wife and the petitioner has produced the first page for the Gatiiguru property which shows a registration date of 18<sup>th</sup> December 2019 but fails to disclose the full chain of ownership or evidence of the date of purchase.
32. The respondent argues that the petitioner was in exclusive possession of the relevant documents concerning the said properties and he has failed to produce complete records showing when and how they were acquired. Furthermore, Section 2 of the *Matrimonial Property Act* her non monetary contributions including child care, domestic responsibilities and her role in maintaining the household while the petitioner engaged in income generating activities constitute valid and legally recognized contributions to matrimonial property.
33. Relying on the cases of JOO vs MBO; Federation of Women Lawyers (FIDA Kenya) & Another (Amicus Curiae) (Petition 11 of 2020) [2023] KESC 4(KLR) and UMM VS IMM [2014] eKLR, the respondent urges the court to divide the matrimonial suit property based on the contributions of the parties. The petitioner made little contribution towards the development and maintenance of the matrimonial home after the separation. Furthermore, the petitioner's inaction for over ten years despite being aware of the consent order supports her position that he abandoned any active interest in the property. The respondent submits that she has produced various forms of documentary evidence to demonstrate her significant monetary contributions to the development and improvement of the matrimonial home after the separation. The respondent argues that the receipts from Victoria Synergy Enterprises indicate the nature of the transaction and itemizes the materials paid for which include hardware supplies, plumbing materials and electrical fittings.
34. The petitioner filed Further Submissions dated 19<sup>th</sup> September 2025 and argues that the respondent has failed to prove that the properties in Juja South Estate and Gatiiguru area are matrimonial properties. The respondent has failed to show when the properties were acquired and that they belong to him. Furthermore, the respondent has admitted that the two minors attained the age of majority in the year 2014 hence she cannot purport that her non monetary contributions included child care, domestic responsibilities.
35. The petitioner argues that upon dissolution of the marriage in February 2018 any improvement on the property was done with the knowledge that the said property being matrimonial property was subject to division or distribution under the Matrimonial Properties Act which deals with the issue of each party's contributions either towards the acquisition of the property or improvement of the property during the subsistence of the marriage and not contributions after the dissolution of the marriage.



## Issues for determination

36. The main issues for determination are:-
- a. Whether the court has the jurisdiction to enforce the consent in Thika Children's Case No. 163 of 2012.
  - b. Whether the properties in Juja South Estate and Gatiiguru area constitute matrimonial properties.
  - c. Whether the respondent contributed towards the acquisition and development of the said properties.
  - d. Whether the respondent is entitled to a 50% share of the said properties.

## The Law

### Whether the court has jurisdiction to enforce the consent in Thika Children's Case No. 163 of 2012.

37. It is not disputed that parties herein entered a consent in Thika Children's Case No. 163 of 2012 on 7<sup>th</sup> August 2013 to the effect that the matrimonial house built by the parties on Plot Number XXX Phase 1 part 1 of [Particulars Withheld] Company Limited be sold at the current market value and the proceeds thereof be shared equally between the parties.

That this matter be mentioned on 2<sup>nd</sup> October 2013 for purposes of recording a further consent on how both parties shall use and apply the proceeds thereof for the welfare of the children.

38. The said consent was adopted as an order of the court in the children's court. Therefore, this court does not have the jurisdiction to enforce or vacate the said consent. Parties would need to set aside or vary the same in the court that adopted the consent order. If the parties are aggrieved by the said consent, they are at liberty to set aside by consent and still sort out distribution of the matrimonial home by consent. an appeal against the same. Although parties are in agreement that the suit property is matrimonial property, this court has no power to distribute it herein since there exists a valid consent order between the parties in another case that was decided by a competent court. Similarly, this court has no power to set aside the consent order made by another court. The court that recorded the consent ought to be approached by the parties for orders of setting aside the said orders before this court can make the declaratory orders sought herein.

### Whether the properties in Juja South Estate and Gatiiguru area constitute matrimonial properties.

39. 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.
40. 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.
41. In the instant case, the marriage between the parties herein commenced on 6<sup>th</sup> September 1994 vide a Christian marriage. The decree nisi was issued on 13<sup>th</sup> July 2017 and made absolute on 7<sup>th</sup> February 2018.
42. According to the petitioner, he currently resides on the property in Juja South Estate with his partner JWM and their two children. He has argued that the said property is not his but his partner's Jane



Mundia and has produced a copy of plot allocation certificate. The respondent on the other hand claims that the property belongs to the petitioner but she has not produced any documentary evidence to that effect. I have perused the record and noted that the petitioner has produced a certificate of plot allocation for Plot No. XX registered to one JWM. As such, the said property cannot be said to form a matrimonial property as it is registered in the name of a 3<sup>rd</sup> party JWM.

43. The petitioner produced a Certificate of Title in respect of land parcel number Kakuzi/Kirimiri Block 9/XXX which the parties have been referring to as the land parcel in Gatiiguru area near Kilimambogo. The petitioner has produced the first page of the title which shows that he is the registered owner of the said parcel of land which registration on 18<sup>th</sup> December 2019. Although I have noted that the respondent argues that the land was acquired during the year 2018 as was admitted by the petitioner she has not established that the land was purchased during the subsistence of their marriage. He who alleges must prove. It is evident from the record that the respondent did not know the land parcel number or even how or when it was acquired. Thus going by the date of registration on the title and there being no evidence to the contrary on the history of the land, it is my considered view that the land parcel Kakuzi/Kirimiri Block 9/XXX does not constitute matrimonial property.
44. I reach a conclusion that the petitioner has failed to prove this case to the standards required and it is hereby dismissed. The respondents counter claim of the two parcels of land one in Juja south Estate and the other at Gatiiguru area has not been proved.
45. Consequently, both the petition and the counter claim are hereby dismissed for lack of merit.
46. Being a family matter, each party shall meet its own costs.
47. It is hereby so ordered.

**JUDGEMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 13<sup>TH</sup> DAY OF NOVEMBER 2025.**

**F. MUCHEMI**

**JUDGE**

