

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAPENGURIA.

MATRIMONIAL CAUSE NO. E001 OF 2023(OS)

RUTH CHEBET NGURIARENG PLAINTIFF

- V E R S U S -

BENJAMIN L. LIMAKEMER..... DEFENDANT

JUDGEMENT

The Originating summons dated 30/3/2023 was filed by the plaintiff Ruth Chebet Ngurareng who seeks that the following orders be issued against the defendant, Benjamin M. Makarer

- 1. Declaration to issue that the immovable property known as West Pokot/Keringet A/4230 with all the developments therein acquired by funds and efforts of the plaintiff and defendant during their marriage and registered in the names of the Defendant is matrimonial property.**
- 2. That a declaration issue that the immovable property known as West /Pokot /Keringet A/3876**

acquired by the funds and efforts of the plaintiff and the defendant during their marriage and registered in the names of the defendant is matrimonial property

3. That the above-mentioned properties be divided between the plaintiff and the defendant according to each parties contribution towards the acquisition of and development thereof.

4. In the alternative, if the suit properties will be incapable of being shared as they are, the same be valued and sold and the proceed be shared in the ratio according to contribution as will be determined b the court.

5. That the defendant by himself or his agents be restrained from alienating, encumbering or in any manner disposing of the said properties without the consent of the plaintiff pending the hearing and determination of this suit.

6. That the defendant be condemned to pay the costs of the originating summons.

The Originating summons was supported by the Affidavit of the plaintiff dated 30/3/2023 and a further affidavit dated 25/7/2023.

The Originating Summons was opposed and the defendant filed a replying affidavit in defence - dated 2/6/2023.

Directions were taken that the Originating summons do proceed by way of viva voce evidence and the plaintiff's affidavits were adopted as her witness statements and she called one other witness, John Tulel (PW2).

PW1's case is that she got married to the defendant under Pokot customary law on 12/3/2014 and they were blessed with two (2) issues Joy Cheyech Mungan and Debra Chepkes Lemakener; that the marriage was dissolved on 11/1/2022; that she was employed by West Pokot County Assembly as an office Assistant since 1/5/2014; that she looked for a parcel of land to buy and met John Tulel, PW2 who had land to sell measuring 50 feet X by 100 feet which was part of West Pokot /Keringet A/1951 and they agreed on purchase price of Kshs.500,000/=; A sale agreement was entered into on 11/2/2015 which shows that the defendant was the buyer while PW1 was a witness and while PW2 was the seller; that the defendant paid a deposit of

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Kshs.120,000/=; that PW1 applied for a loan from KCB using a pay slip as security. She got the loan and paid off the balance of 380,000/= on 11/2/2015 PW1

applied for another loan of Kshs.200,000/= to which they added more money and started to construct their matrimonial two bedroomed house, In June 2020, she renovated the house, put up a water tank. In 2021, the defendant obtained a title to the said land in his name "West/Pokot/Keringet 'A'/1951 and got a new number of 'A'/4230; that in 2017 she asked the defendant to look for land for small scale farming; that in 2017 she obtained a loan of Kshs.300,000/= which she gave to the defendant to purchase West Pokot Keringet 'A'/3876 and she later learnt that accused obtained the title to the land; that she also purchased a motor cycle in 2019 which she gave to the defendant to use but she later learnt that he had sold it; that she opened a phone accessories shop at Makutano, and the plaintiff renovated and stocked it and established an Mpesa business; that she contributed directly and indirectly by doing house chores, caring for the children; and allowed the

defendant to take care of the developments and land purchases.

It was the plaintiff's further prayer that since she was sent away from the matrimonial home in 2023, she lives in a rented premises with her children and the said house is far from the children's school, that the house at Keringet 'A'/4230 be given to her to reside with her children.

The defendant, Benjamin Limakemer testified as DW2. He adopted the Replying Affidavit he filed dated 13/6/2023, and annexures which were produced as defence exhibits 1 to 8. He admitted that he was married to the plaintiff in 2013 upto 2023; that they were blessed with two children; that when they bought West Pokot Keringet 'A'/4230 they were together in 2015 February, and put up the house in 2015; that on 23/2/2015 he sold nineteen (19) bulls and produced movement permit and receipt for payment to the County Government; that he was paid Kshs.665,000/= paid to owner Kshs.380,000/= and banked 240,000/= with which he started building the house. He took two loans with banks in April and October. He denied that PW1 contributed to the construction of the house. He admitted that PW1 was a witness to the sale agreement; that

PW1 cooked for him and did house chores when they lived together. He denied that PW1 deposited Kshs.240,000/= in his account. As for West/Pokot Keringet 'A'/ 3876, he bought in 2017, he denied that PW1 was pregnant at the time.

The Plaintiff's Submissions.

It was submitted that section 6 of the Matrimonial Property Act 2013 defines what matrimonial property is while section 2 of the same Act defines what a matrimonial home is; that it is not disputed that the plaintiff and defendant lived together for five (5) years as husband and wife in their house built on LR West Pokot/Keringet 'A'/4230 from 2015; that another property 'A'/3876 purchased in May 2017 was used to plant maize for their subsistence and hence these were matrimonial properties having been acquired during the subsistence of the marriage and the plaintiff having contributed to their acquisition.

As to whether the plaintiff contributed towards acquisition of the said properties, it was submitted that the plaintiff was a witness to the agreement dated 11/2/2015 (P.Exh.3); that PW1 was employed at West Pokot County Assembly, looked for

property with DW1 as confirmed by PW2, and that the letter from PW1's employer confirms that she received a loan from KCB and that the balance of the price for land was paid on 24/2/2015 a few days after she applied for the loan; that PW1 renovated the house, sofa set and other household items including the Television set.

Counsel relied on the decision in **IC -V- SS MC 01/2021(2024) KECA 3366** where the Court held that distribution depends on the spouses' individual contributions in acquisition of the properties which may be direct or indirect and is not limited to what is listed in section 2 of the Act; that in this case, exhibit 8, bank statements is evidence that PW1 was servicing loans which she must have been working for the various projects like purchase of property and renovation; that though the defendant produced a statement of account, he did not show where the money came from and no evidence of income and so the source must have been the plaintiff. Counsel also relied on Supreme Court decision in **JOO -V- MBO; Federation of Women Lawyers (Amicus curae)** where the court observed that marriage is based on trust and it is not anticipated that one day one will need to prove every contribution made during

the marriage. It was therefore submitted that PW1 was in gainful employment since 2014, had children, cooked and managed the house, which counts for her contribution and the court should apply the doctrine of '**equality is equity**' in that what should be taken into account is not the quantitative contribution but what either party contributes whether direct or indirect contribution. Counsel also relied on the decision of Lord Far in **Burns -V- Burns (1984) ALL ER 244**; that the plaintiff did not anticipate that the breakdown of the marriage and did not keep record.

Whether the plaintiff is entitled to a share of the matrimonial properties and to what ratio. Counsel urged the court to award the matrimonial home to the plaintiff who lives with children in a rented house and that the defendant has enjoyed the house since 2021 to date and should have the other land West Pokot A/3876, Counsel also relied on **JWM - V- JMM CC 29/2014 (2023) KEHC** where the court held that both direct and indirect contributions are important.

The Defendant's Submission

Mr. Kiarie Counsel for the defendant made reference to the decision in **CC 128 of 2014 PMM -V- ZWM** where Judge Kiage KAPE. MATRIMONIAL CAUSE NO. E001 OF 2023 (OS) (JUDGMENT) Page 8 of 31

considered the provisions of section 7 of the Matrimonial Properties Act which provides that matrimonial property will rest in the spouses according to contribution of either spouse towards its acquisition. The same proposition was made in **JOO -V- MBO Supra**. On West Pokot /Keringet A4230, Counsel submitted that the sale agreement dated 11/2/2015 indicates that the purchaser was the defendant who paid the deposit of 120,000/= and paid the

balance of 380,000/= on 23/2/2015 after he sold bulls, that he banked Kshs.240,000/= on 25/2/2015 being the balance from sale of bulls; that the plaintiff failed to prove her allegation that she got a loan of Kshs.750,000/= to finish paying off the balance on the land agreement was not proved.

Purchase of West Pokot Keringet A/3876; that the defendant is the purchaser as per sale agreement dated 31/5/2017 and purchase price was fully paid at time of execution; that DExh.7, the defendants bank statement of 31/5/2017 showed a withdrawal of 200,000/= from Equity Bank Account (D.Exh.7) belonging to the defendant and that on the same date 250,000/= was withdrawn from the Defendant's KCB account (D.Exh.8) on the date the agreement was entered into;

that to the contrary the plaintiff stated that she was given a loan of Kshs.350,000/= for the said land on 9/6/2017 P.Exh.7 after the agreement was already signed and Counsel concluded that the Plaintiff did not contribute to the purchase of the said land.

On construction and renovation of the matrimonial house; the defendant's Counsel submitted that by Dexh.3, the defendant banked Kshs.240,000/= after sale of the bulls and that the same was used to start construction of the house, on plot 'A'4230; that to the contrary the plaintiff failed to demonstrate that she took a loan of Kshs. 200,000/= and added it to a previous balance from the loan of Kshs.750,000/= to construct the house on plot A4230.

As regards renovations, it was submitted that the documents produced (P.Exh.5) in evidence by PW1 were but quotations from Mtelo Hardware but not receipts of what was allegedly purchased. On the purchase of the television Counsel urged that the defendant produced a receipt D.Exh.5; that the TV that was bought on 12/10/2020 for Kshs.20,000/= and its Serial number is 003EGLNK2664 which is different from that the plaintiff claims,

As regards allegation that the plaintiff bought a motor cycle for the defendants use, it was submitted the receipt to prove purchase of the motor cycle; that the bank statement supported her taking of a loan was not sufficient proof of purchase of a motor cycle.

On Mpesa shop and phone accessories, it was submitted that the plaintiff failed to provide any proof that she opened a shop after being paid for a training. The Counsel submitted that the plaintiff had not proved that she contributed to any of the properties and her claim must fail.

Analysis

The court has now considered the pleadings, evidence adduced by both parties, exhibits and the parties respective submissions. From the evidence it is not in dispute that the parties herein were married in 2013 and the marriage was dissolved in 2023 following divorce case in **Kapenguria Divorce case no. E005 of 2021**. It is also not in dispute that during the marriage, some properties were acquired and the question that the court has to ascertain is

(1.) whether they are matrimonial properties.

**If the court finds in the affirmative, then
the next question will be**

**(2.) whether they ought to be shared and if so
in what proportion.**

In **JOO -V- MBO Federation of Women Lawyers (FIDA) & Another Petition 11/2020 (2023) KECA**, the Supreme court held that the applicable law in such matters is determined from when the suit was filed.

In this case, the Originating Summons was filed in April 2023 and therefore the applicable law is the **Matrimonial Property Act No.49 of 2013 (hereinafter referred to as the Act)**. The said Act became operational from 11/1/2014.

Section 6 of the Act defines matrimonial property as follows;

6. Meaning of matrimonial property

(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.

(3) Despite subsection (1), the parties to an intended marriage may enter into an agreement before their marriage to determine their property rights.

(4) A party to an agreement made under subsection (3) may apply to the Court to set aside the agreement and the Court may set aside the agreement if it determines that the agreement was influenced by fraud, coercion or is manifestly unjust.

Adopting the definition of matrimonial property from Section 6 of the Act, to mean the matrimonial home or homes, household goods and effects in the matrimonial home or homes, or any

other immovable and movable property jointly owned and acquired during the subsistence of the marriage.

The two main properties in issue are LR. West/Pokot Keringet 'A'/4230 and West/Pokot Keringet 'A' 3876 Section 2 of the Act defines Matrimonial home 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.”** The couple got married in 2013. It is on record that plot A 4230 was acquired in February 2015. The final payment was made on 24/2/2015 as per the sale agreement (D.Exh.2)

Soon thereafter, the couple started to construct a house thereon and they moved in later in 2015. They resided in the said house where both their children were born in 2017 and 2019 till the plaintiff moved out in 2021. I find that the said property qualifies as matrimonial property.

As regards Parcel A3876, the same was purchased on May 2017 as evidenced by the sale agreement D. Exh.6. The plaintiff testified that they had been planting maize on the said

land though the defendant denied that they did. Having been acquired during the subsistence of the marriage, this court finds that it forms part of the matrimonial property.

Whether the plaintiff contributed to acquisition of the subject properties; In addressing the dilemma that courts used to find themselves in when it comes to distribution of matrimonial property, Judge Mrima had this to say in **IC - V - SS Supra “61, the longstanding quagmire on how matrimonial property is to be shared in the event spouses can no longer sustain their marriages and are unable to agree on the distribution, has now been settled by the law and the superior courts.”**

62 “The position is that the distribution depends on the spouse’s individual contributions in the acquisition of the properties. Contribution may be direct monetary contribution or otherwise”.

Section 2 of the Act defines contribution as follows;-
“contribution means monetary and none monetary contribution 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.**

Section 7 of the Act provides for ownership of property. It states **“7 ownership of matrimonial property:- Subject to section 6(3) ownership of matrimonial property vests in the spouse according to the contribution of another spouse towards this acquisition, and shall be divided between the spouses if they divorce or their marriage is otherwise dissolved.”**

It is *..... that the non-monetary contributions listed in section 2 of the Act, is not limited or exclusive to the five categories but is rather inclusive and the court tasked with determining a party’s non-monetary contribution may consider other factors that the party may bring to the fore.

The courts have addressed the above issue by considering the provisions of Article 45(3) of the Constitution, it provides as follow;

“Parties to a marriage are entitled to equal rights at the time of marriage and at the dissolution of marriage” It does not mean that the parties have to share the property at 50:50. In **UMM -V- IMM (2014) eKLR Kiage JA** stated thus **“I take the view that at the dissolution of the marriage each partner should walk away with what he/she deserves. What one deserves must be arrived at by considering her/his respective contribution whether it be monetary or non-monetary. The bigger the contribution, the bigger the entitlement. Where there is evidence that a non-monetary contribution entitles a spouse to half of the marital property then, the courts should give it effect. But to hold that Article 45(3) decrees an automatic 50:50 sharing could imperil the marriage institution. It would give opportunity to a fortune seeker to contract a marriage, sit back without making any monetary or non-monetary contribution, distress the union and wait to reap half the marital**

property. That surely is oppressive to the spouse who makes the bigger contribution. That cannot be the sense of equality contemplated by article 45(3).”

In PNN -V- ZWM (2017) eKLR, the court said “Thus it is that the Constitution thankfully, does not say equal rights’ including half of the property’. And it is no accident that hen Parliament enacted the Matrimonial Property Act 2013, it knew better that to simply declare that a property shall be shared on a 50:50 basis. Rather it set out in elaborate manner the principle that division of matrimonial property between spouses shall be based on their respective contribution to acquisition.”

In JOO the Supreme Court said “.. it is our finding that the stated equality under Article 45 (3) means that the courts are to ensure that at the dissolution of a marriage, each party to a marriage gets a fair share of the matrimonial property based on their contribution. This is best done by considering the respective contribution of each party to ensure no party is unfairly denied what they deserve as well as ensuring that no

party is unfairly given more than what he or she contributed.”

Having considered the law and the various decisions, the question is whether the plaintiff made monetary contribution to the matrimonial property.

This being a matter of a civil nature, the Evidence Act applies and the burden of Proof lies on the plaintiff to prove her claim on a balance of probabilities. I will therefore consider each allegation made by the plaintiff regarding her contribution to the marriage property.

As regards West Pokot/Keringet A4230; Although PW1 told the court that the land was purchased on 1/2/2015 with the defendant paying a deposit of Kshs.120,000/= and that she paid the balance of Kshs.380.000/= after she obtained a loan of Kshs.750,000/=; The Defendant demonstrated that he also paid Kshs. 380,000/= from sales of bulls. PW1 only produced a letter of introduction to Kenya Commercial Bank (KCB) by the Human Resource Officer of West Pokot County where she works. She did not avail her bank statement as proof that she received the said money or how the money was disbursed; She did not even avail her payslips to show that deductions were made towards

repayment of the loan or bank statements to show when she withdrew the cash. The plaintiff was however, involved in the sale transaction and signed it as a witness.

As regards title West Pokot/Keringet A/3876; the plaintiff testified that she obtained a loan of Kshs.350,000/= to assist in payment of the said land. The agreement is dated 31/5/2017. The plaintiff said the money was deposited to her account on 9/6/2017 and withdrawn on the same date 9/6/2017; that she gave the money to the Defendant who claimed to have borrowed what he used to pay for the land. However, the Defendant's accounts both in Equity Bank and Kenya Commercial Bank (KCB) bank shows that withdrawals were made on the date that the land was paid for. The defendant therefore demonstrated that money was withdrawn from his two accounts Equity Kshs.200,000/= and KCB Kshs.250,000/= to pay for the said land. There was a balance to be paid and the defendant did not explain where it came from. It seems the plaintiff got the loan after the sale had already taken place. There is no direct evidence that the plaintiff contributed to the purchase of the said plot.

The plaintiff also claimed to have contributed to the Construction of the matrimonial house by obtaining a loan of Kshs.200,000/=

from the bank and the balance from the loan of 750,000/=. However, just like the other properties the plaintiff failed to avail any evidence to support her assertion. The defendant claimed to have started construction of the house with Kshs.240,000/= which he got from the sale of bulls and supported his averment with his bank statements. Again, plaintiff did not bother to get bank statements to support her claim.

In regard to renovation of their matrimonial house, the plaintiff produced quotations from Mtelo Hardware but those are not proof that she paid for the said goods. In the invoices the Mpesa statement of 2/6/2020 however, does show that she made some payments for same to Mtelo Hardware before the above invoices were made for Kshs.122,000/=.

The plaintiff claimed to have purchased a 32" LG Television Set on 20/12/2018 Serial Number 608EL5KH332. On the contrary the defendant produced in court a 32" LG TV purchased on 12/10/2020 Serial No. 003ELLNK 2664. The TV set produced in

court by the defendant was purchased in 2020, during the subsistence of the marriage. It is not clear whether another TV set had been bought in 2018 as alleged by the plaintiff.

On the allegation that the plaintiff bought a motor cycle for the defendants use, no receipt was produced nor was the Registration Number of the motor cycle revealed. Similarly, the plaintiff did not adduce any evidence to support the allegation that she opened an Mpesa shop for the defendant because she could not prove that she earned some money from a training.

It is clear from the above analysis, that the plaintiff was not able to prove her monetary contribution to the two matrimonial properties.

The next question therefore is whether the plaintiff indirectly contributed to the acquisition of the matrimonial property.

The Supreme Court when dealing with the issue of non-monetary contribution, held as follows; **“It is necessary to state that in a marriage union, which is predicted on trust, no spouse anticipates that one day they would have to prove every contribution that they made to the**

marriage as that would negate the very essence of trust which is the cornerstone of marriage vows”

The Supreme court in also held that both the matrimonial property Act and Article 45 (3) of the Constitution apply to the issue to distribution of matrimonial properties and

held that both laws underpin the principle of equality. Judge Mrima in **IC -V- SS (Supra)** adopted the reasoning of the Supreme court at paragraph 93 of the **JOO case**, where the Supreme court said

Article 45(3) of the Constitution underscores the concept of equality as one that ensures that there is equality and fairness to both spouses. Equality and fairness are therefore one and intertwined. Equality also underscores the concept that all parties should have the same rights at the dissolution of a marriage based on their contribution, a finding we have already made and in stating so we recognize that each party’s contribution to the acquisition of matrimonial property may not have been done in an equal basis as a party may have significantly contributed more

in acquiring property financially as opposed to the other party.

Equity further denotes that the other party, though having not contributed more resources to acquiring the property, may have nonetheless, in one way or another, through their actions or their deeds, provided an environment that enabled the other party to have more resources to acquiring the property. That is what amounts to indirect contribution. Equity therefore advocates for such a party who may seem disadvantaged of failing to have the means to prove direct financial contribution not to be stopped from getting a share of the matrimonial property.

94, The Supreme court also applied the maxim of equity, **'equality is equity'** in which equity is now a constitutional principle in Article 10(2) (b) of the Constitution; the Apex Court said....**As was pointed out by the court in the English case of *Gissing -V- Gissing (1971) AC 886*, the maxim '*equality is equity*' has never been truer. To our minds, equity**

is an important principle when it comes to matrimonial property since what is fair as it relates to equity is not a question of the quantitative contribution by each party but rather the contribution by any party in any form, whether direct or indirect. Any substantial contribution by a party to a marriage that led to acquisition of matrimonial property, even though such contribution is indirect, but nevertheless has in one way or another, enabled the acquisition of such property amounts to significant contribution. Such direct or indirect acts as was discussed by Lord Justice Fox in Burns -V- Burns (1984) 1 All ER 244 may include:

- (i) Paying part of the purchase price of the matrimonial property;***
- (ii) Contributing regularly to the monthly payments in the acquisition of such property;***

- (iii) Making a substantial financial contribution to the family expenses so as to enable the mortgage installments to be paid;**
- (iv) Contributing to the running of and welfare of the home and easing the burden of the spouse paying for the property.**
- (v) Caring for children and the family at large as the other spouse works to earn money to pay for the property.**

The Apex court emphasized the issue of fairness in distribution and that Article 45(3) of the Constitution does not necessarily mean 50:50 sharing when It said, Paragraph 96 **“These considerations are in line with the finding of the court in the English case of White -V- White (2001) 1 AC 596 where Lord Nicholls of Birkenhead held that the court should always ensure a fair outcome in considering the contribution of spouses by stating:**

“Self-evidently, fairness requires the court to take into account all the circumstances of the case. Indeed, the statute so provides. It is also self-evident that the circumstances in which the

statutory powers have to be exercised vary widely..... But there is one principle of universal application which can be stated with confidence. In seeking to achieve a fair outcome, there is no place for discrimination between husband and wife and their respective roles. Typically, a husband and wife share the activities of earning money, running their home and caring for their children. Traditionally, the husband earned the money, and the wife looked after the home and the children. This traditional division of labour is no longer the order of the day. Frequently, both parents work. Sometimes it is the wife who is the money-earner, and the husband runs the home and cares for the children during the day. But whatever the division of labour chosen by the husband and wife, or forced upon them by circumstances, fairness requires that this should not prejudice or advantage either party when considering paragraph (f) relating to the parties contribution.”

This is implicit in the very language of paragraph (f)

“the contributions which each... has made or is likely to make to the welfare of the family, including any contribution by looking after the home or caring for the family.”

If, in their different spheres, each contributed equally to the family, then in principle it matters not which of them earned the money and built up the assets. There should be no bias in favour of the money-earner and against the home-maker and the child-carer.”

This court takes cue from the **JOO and IC cases**. The plaintiff and defendant were married from 2013 to about 2021 when they separated. They lived together for eight (8) years.

The plaintiff was employed by the County Government of West Pokot. She has a steady income whereas the defendant was said to be a businessman.

The defendant admitted that the plaintiff used to cook for him and manage the home. I believe the plaintiff also nurtured the children washed the family’s clothes, provided companionship and cared for everyone in the home.

Although the plaintiff did not demonstrate how she contributed to building of the house, the defendant had only Kshs.240,000/= to start off the construction. That sum was not sufficient to construct the house. He could not tell exactly where he got the funds to finish the house. I believe that the plaintiff would not have money and not complete building the house she was residing in. This court is convinced that she contributed to its construction. Again, as regards purchase of parcel A 3876, the defendant had 450,000/= from his account. The plot cost Kshs.550,000/=. There was no explanation as to how the balance of Kshs.100,000/=

was paid for. Might it have been paid for by the plaintiff's loan? It is evident from the documents produced by the plaintiff that she got a loan of Kshs.350,000/= in June 2017 and Kshs.260,000/= in 2019 as evidenced by the bank statement.

Although the plaintiff failed to prove direct monetary contribution, I find that she contributed even monetarily but did not keep her documents as this was not foreseen. Having pointed above that she is the one with a steady job and salary, this court finds that she must have contributed substantially to

the family's finances and this court will find the contribution of each to be 50:50.

The defendant said that the plaintiff has moved on and has another child with somebody else. That was not denied by the plaintiff. If the plaintiff is in another relationship, and in applying fairness, it is only proper that the defendant remains in the matrimonial home and the plaintiff do get plot A/3876 where she can construct her home if she so wishes. The defendant to remain with plot A/4230.

In the end, I find and make following orders.: -

(1.) That the plaintiff's claim partially succeeds;

(2.) A declaration do issue that the two Assets West Pokot Keringet A4230 and West Pokot A3876 are matrimonial property.

(3.) That the defendant remains on plot West Pokot/Keringet A/4230;

(4.) That the plaintiff to have plot West Pokot/Keringet A 3876;

(5.) That the defendant do effect the transfer of the said land into the plaintiff's name within sixty (60) days;

(6.) This being a family matter, each party will bear their own costs.

Dated, signed and delivered at Kapenguria on 28th day of November, 2025

HON. R. WENDOH - JUDGE.

Delivered in the presence of

Ms. Opondo present for the Plaintiff

Ms. Mufutu present for the Defendant

Juma/Hellen-Court Assistants