



**RSI v LW (Matrimonial Cause 12 of 2023)  
[2025] KEHC 17898 (KLR) (27 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 17898 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
MATRIMONIAL CAUSE 12 OF 2023  
EN MAINA, J  
NOVEMBER 27, 2025**

**BETWEEN**

**RSI ..... APPLICANT**

**AND**

**LW ..... DEFENDANT**

**JUDGMENT**

1. Vide an Originating Summons dated 4<sup>th</sup> September,2023 and filed wherein the applicant sought the following orders that:

- “1. The property L.R Number 12715/8001 (original number 12715/3/13) be vested absolutely in the applicant herein.
- 2. The respondent herein transfers her interest in the land L.R number 12715/8001 (Original Number 12715/3/13) to the applicant.
- 3. An order vesting the tenancy on the house built on L.R number 12715/8001 (Original Number 12715/3/13) to the applicant
- 4. The Respondent grants vacant possession of the property L.R number 12715/8001 (Original Number 12715/3/13) to the applicant.
- 5. In the alternative an order of eviction from the property L.R number 12715/8001 (Original Number 12715/3/13) to the applicant.
- 6. Cost hereof be provided for.
- 7. Any other Order the court deems fit and just.”

2. The grounds upon which the summons is/was premised are in the body of the said summons.



### **Supporting Affidavit**

3. The summons was supported by an affidavit dated 4<sup>th</sup> September ,2023, sworn by Richard Shiverenje Isindu, the Applicant herein, wherein, he deposed that that he was joined in matrimony with the respondent on 11<sup>th</sup> April 1998 where their marriage was blessed with two sons. He acquired L.R number 12715/8001 (Original Number 12715/3/13) during the subsistence of their marriage with own funds and developed it on his own and without contribution from the respondent. He registered the property in their joint names for the sake of the children and in the course of time their union was rendered irretrievably broken down. The respondent pushed him out of the property while denying him any kind of access.

### **Replying Affidavit**

4. The application was opposed vide Replying Affidavit dated 8<sup>th</sup> March,2024 sworn by Lydia Wanyaga, the Respondent herein, wherein, she deposed that they got married on 11<sup>th</sup> April 1998 where they were blessed with two children. That they moved into the suit property in 2009 and have brought up their sons there. That the applicant deserted their home and moved elsewhere and a divorce petition followed. The applicant then registered a caution against the land to protect her interest and that of her sons as the applicant had caused fraudulent entry into the title that he was the sole owner of the suit. She averred that she contributed to both the acquisition and construction of the suit property. She has also contributed to the development and or improvement of the home.

### **Hearing**

#### **The Applicant's Hearing**

5. PW1 was Richard Shiverenje Isindu he testified that the property in dispute is in Syokimau, he registered it in his name and that of the respondent. He was however the sole purchaser. He bought it using his savings, he provided the bankers cheque that purchased the report, a receipt from homeward agency which sold the property and bank statement from Cooperative bank which shows the entire amount. He paid kshs 425,000. He decided to include the name of the respondent for the sake of his children incase anything happened to him. He stated that in the year 2022 he had to leave the property for his own safety.
6. On cross examination he stated that indeed the respondent's name appears on the receipt but he bought the property and developed it all alone. He left the property in the year 2022. But was still contributing to the payment of security and utilities.

#### **The Respondent's Hearing**

7. DWI was Lydia Wanyaga. She testified that the property in issue was purchased through contributions from them in the year 2007. Her name appears on the receipt because she contributed to the purchase and development of the property and while her husband was away she supervised works and taking care of the property. She stated that they lived there until 20220 when the husband moved out but she continued to maintain the house, did landscaping, painted rugged walls, pound the ballast. She registered a caution when she learnt that he husband had re married. After 3 months she was shocked that the property had been transferred to the applicant yet it was matrimonial property. She requested the court to consider her monetary contribution.
8. In cross examination, it was her testimony that she did not have any other home and that she contributed to its acquisition by taking a loan from the bank. She stated that she used to give



- the applicant money in cash and if given time she would avail the evidence. She had made many improvements to the property but did not have proof. She stated that the court should declare the property as matrimonial.
9. The matter was canvassed by written submissions.
  10. The Applicant's in his submissions stated that issues for determination were whether L.R L217518001 (original number L2175/3/73) is matrimonial property? b) Whether the respondent contributed to acquisition and development of the property.
  11. It was submitted that the property in dispute qualifies within ambits of Section 6 of ii) that the subject property of be matrimonial property under the *Matrimonial Property act*.
  12. The applicant contended that whereas the respondent claimed to have made contribution to the purchase of the property, she did not provide any evidence to prove the same. The applicant on the other hand availed evidence to prove that he bought the property solely.
  13. Reliance was placed in the case of MGNK-Versus-AMG {2016}eKLR, ENK -Versus- MNN (Civil Appeal 559 {2021} KECA 2L9 (KLR), UMM vs MM (2014) e KLR, AMK -Versus- DM (Matrimonial Cause 2024).
  14. It was finally submitted that applicant has not laid claim on any property the Respondent acquired during their marriage, if any, and it would be so unfair for this court to grant the respondent gainfully earning employee, a share of the Applicant's property just because she was once married to the Applicant. He urged the court to allow the application.
  15. Counsel for the respondent submitted that is not in dispute that the suit property was purchased in the year 2007, during the subsistence of the marriage between the Applicant and the Respondent. It is also not in dispute that the property served as the family home. Both parties lived on the property and raised their two sons (family) there. Additionally, the property is registered in the joint names of the Applicant and Respondent and the official purchase receipt also bears both their names. These facts firmly establish that the suit property was acquired not only during the marriage but for the purpose of family use.
  16. While relying on the case of JOO v MBO (2023) KESC 4 (KLR) it was submitted that the Supreme Court reaffirmed that the status of a property as matrimonial is based on the timing of its acquisition, the purpose it serves and the intention of the parties at the time of acquisition. The Court emphasized that where property is acquired during the subsistence of a marriage and used as the family home, it qualifies as matrimonial property.
  17. The respondent contended that based on the above, the suit property constitutes matrimonial property under Section 6 of the *Matrimonial Property Act*, 2013 and is therefore subject to division upon dissolution of the marriage.
  18. The respondent submitted that she made both direct and indirect contribution to the acquisition and development of the suit property. That she produced hardware receipts showing purchases of construction materials as well as photographs of renovations and improvements made to the home.
  19. The respondent urged the court to find the property as matrimonial property and find that she made direct and indirect contribution to the property thus dismiss the application.



## Determination/analysis

20. I have considered the respective parties' positions as elucidated in their verbal testimonies, the affidavit evidence as well as their submissions. There are two substantial issues for consideration.
- The first is whether the suit property LR no 12715/8001(original number 12715/3/13) constitutes matrimonial property.
- The second is whether in the circumstances the applicant is entitled to the orders prayed for.
21. The question of what constitutes matrimonial property is now well settled in law. Section 6(1) of the *Matrimonial Property Act* No. 49 of 2013 defines matrimonial property as- 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.
21. It is not in dispute that indeed the parties were married in 1998 and that their union was blessed with two children who are now adults and they lived together upto 2022 and are now divorced.
23. Both Applicant and Respondent admit that the subject suit property LR no 12715/8001(original number 12715/3/13) was acquired/purchased during the subsistence of their marriage. Although each party has a different version of how the sale/purchase of the said property was acquired/purchased. Therefore it is matrimonial property within the meaning of the Act.
24. The issue that brings dispute is whether the property known as LR no 12715/8001(original number 12715/3/13) was acquired by joint efforts and funds of the parties during the subsistence of their marriage or by sole effort of only one party to the marriage.
25. It was the Applicant's case that during the subsistence of their marriage he bought the suit property with his own funds and developed it using his own resources. He produced bank statements and receipts.
26. The applicant contended that he decided to have the property registered in joint name for the sake of the children without any intention to alienate his full rights.
27. The Respondent on the other hand testified that the property in issue was purchased through contributions from them in the year 2007. Her name appears on the receipt because she contributed to the purchase and development of the property and while her husband was away she supervised works and taking care of the property. She stated that they lived there until 2020 when the husband moved out but she continued to maintain the house, did landscaping, painted rugged walls, pound the ballast.
28. The Respondent produced document such as receipts of materials bought as evidence of her contribution to the purchase of the suit property.
- Under Section 2 of the *Matrimonial Property Act* No. 49 of 2013, Contribution is defined to mean both monetary and non-monetary contribution. Non-monetary contribution includes: Domestic work and management of the matrimonial home; Child care; Management of family business or property; and Farm work.
29. DW1 the respondent herein contributed both in monetary terms and non-monetary terms; Admittedly, they have 2 adult children and DW1 must have contributed to their wellbeing through nurturing and the applicant stated that he used to travel by flight a lot meaning the respondent was the one taking care of the home. Therefore, while the applicant alleges to have purchase the suit property solely of the suit property DW1's evidence of both monetary and non- monetary contribution is not controverted.



30. Section 7 of the same Act stipulates that ownership of Matrimonial Property depends on each spouses' contribution to wit: -

“Subject to section 6(3), ownership of matrimonial property vests in the spouses according to the contribution of either spouse towards its acquisition, and shall be divided between the spouses if they divorce or their marriage is otherwise dissolved.”

31. . Section 14 of the Act provides that:

“Where matrimonial property is acquired during marriage-

- (a) In the name of one spouse, there shall be a rebuttable presumption that the property is held in trust for the other spouse; and
- (b) In the names of the spouses jointly, there shall be rebuttable presumption that their beneficial interests in the matrimonial property are equal.”

32. I am guided by the observation of the Supreme Court in the recent decision of Petition No 11 of 2020 JOO v MBO (2023) KESC 4 (KLR) where it stated that we must note that, in a marriage, the general assumption is that both spouses share everything, and on the face of it, both parties contribute towards the home or family, in one way or another, to whichever extent, however big or small. Again, and further to this, both spouses may also work and earn income, which inevitably, at most instances, always ends up being spent on the family unit. It may be the whole income, or a substantial part of it, but ultimately, a percentage of it goes into the family.

33. To convince the court of her monetary contribution towards the acquisition of the matrimonial property, she produced a receipt which kshs 425,000 was paid to homeward agencies which receipt had both the name of the applicant and the respondent. I am therefore convinced, on the basis of the evidence before me and on a balance of probability, that the Applicant's contribution was monetary in nature.

34. It is also imperative to establish whether the respondent made a non-monetary contribution, if any. Non-monetary contribution includes: Domestic work and management of the matrimonial home; Child care; Management of family business or property; and Farm work. The union has been blessed with two issues, who from the evidence are now adults. This is clear evidence of child care. The gist of the foregoing is that, on the balance of probability, the respondent indeed made substantial non-monetary contributions in the course of the coverture. She would, in my opinion, be entitled to a portion of the matrimonial property upon dissolution of the marriage which was proved by production of decree nisi.

34 .In P.O.M vs. M.N.K (2017) eKLR the Court stated that:

“This is a suit for division of matrimonial property. The legal regime governing such endeavor is the *Matrimonial Property Act*, Act No. 49 of 2013. The relevant provisions are to be found in Part III thereof. According to those provisions, in particular section 7, such property is to be divided upon divorce or dissolution of the marriage. The prerequisites are that the parties ought to have been in a marriage, to have had acquired matrimonial property during coverture and for their marriage to have been dissolved as at the point orders on division of matrimonial property are being made. A party, who moves the court for orders relating to division of matrimonial property, or declarations thereon, must strive to bring his case within the prerequisites stated above.”



35. In the premises, this courts finds that the property LR no 12 715/8001 (original number 12715/3/13) is matrimonial property as it was acquired during the subsistence of the marriage.
36. Therefore, this Court finds that the suit property LR no 12715/8001(original number 12715/3/13) was acquired/purchased developed during the subsistence of the marriage between Applicant and Respondent.
37. Each of the parties contributed to the acquisition and development of the said property. The extent and amount of contribution is however difficult to calculate. As such I find that they are each entitled to share the property on the basis of 50:50 and they are at liberty to sell the property and share the proceeds in the ratio 50:50 or one can buy out the 50percentum share of the other and become the sole owner.
38. Each party shall bear own costs.  
Orders accordingly.

**JUDGMENT SIGNED, DATED AND DELIVERED VIRTUALLY ON THIS 27<sup>TH</sup> NOVEMBER 2025.**

**E. N. MAINA**

**JUDGE**

In Presence Of:

Mr. Mwangi for Applicant

Ms Musa for the Respondent

C/A: Geoffrey

