



**PMS v MDS (Civil Suit 10 of 2017) [2025] KEELC 8447 (KLR) (4 December 2025) (Judgment)**

Neutral citation: [2025] KEELC 8447 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**  
**CIVIL SUIT 10 OF 2017**  
**HK CHEMITEI, J**  
**DECEMBER 4, 2025**

**BETWEEN**

**PMS ..... APPLICANT**

**AND**

**MDS ..... RESPONDENT**

**JUDGMENT**

1. This judgement relates to the Originating Summons dated 13<sup>th</sup> February, 2017 filed by the Applicant, Paritha Mayur Shah seeking for Orders That:-
  1. Joint proprietorship in respect of the matrimonial home namely L.R. No. 9104/81 situated at Chemilia Close, Nairobi Gigiri Estate be severed and the same be apportioned equally between the parties as tenants in common.
  2. It be declared that the Applicant is entitled to 50% shareholding or such proportion as this honourable court might deemed appropriate of the companies known as Deluxe Trading Company Limited and Seven Star Stone Limited with all buildings and developments thereon acquired and developed by the joint funds and efforts of the Applicant and Respondent during their marriage.
  3. The honourable court be pleased to declare and issue a declaration that all the bank accounts held with the banks listed in the schedule herein below and held in the name of the Respondent or entities he controls are joint accounts of the Applicant and the Respondent and that the Respondent holds the same in trust for the Applicant:-
    - a. Diamond Trust Bank Account.
    - b. Citibank NRI Business Account Number 149 – 929.
    - c. Citibank NRI Business Account Number 103 – 631.



- d. Dena Bank Mulund, India Account Number 2792030026507.
  - e. Fixed deposits at Mulund East at Dena Bank, India.
  - f. Dena Bank Account Number 079910028393.
  - g. Dena Bank Joint Account Number 079910024191.
  - h. Bank of Baroda Fixed Deposits.
  - i. Bank of Baroda Account Number 27920100010622.
  - j. Property in Ahmedabad.
4. The honourable court be pleased to order that the properties, shares and funds enumerated hereinabove in paragraphs 2 and 3 be valued and sold and the net proceeds be divided equally between the Applicant and the Respondent.
  5. The honourable court be pleased to order that the Respondent do provide and disclose a comprehensive list of all the properties, shares and bank accounts he holds and owns both locally and outside the jurisdiction of this court and upon the said disclosure of the properties, shares and funds the same be declared to be held in equal shares between the parties.
  6. The Deputy Registrars be empowered to sign any documents that the Respondent may refuse to sign.
  7. The Respondent be condemned to pay costs of this application and incidentals thereto.
2. The parties after compliance were directed to proceed by way of oral evidence. Each testified and did not call any witnesses.
  3. What is not disputed in their oral evidence is that they got married in June 1993 at Shree Halari Oshwal Samaj Mumbai India and they were blessed with two children born on 21<sup>st</sup> January 1996 and 10<sup>th</sup> March 1998 respectively. They are all adults.
  4. The parties filed a divorce suit in which a dissolution was done on 2016 after issuance of a decree nisi and absolute respectively.
  5. It is also not in dispute that both parties remarried after the divorce. The Applicant married the person who had been accused of committing adultery with at the divorce court.
  6. As regards properties it is not also in dispute that property number LR 920/81 situate at Chemilia Close Gigiri Estate Nairobi is jointly registered in their joint names. That property effectively had been their matrimonial home before the divorce cause.
  7. Currently the Respondent stays there with his new family.
  8. What I also find uncontested is that the company namely Deluxe Trading Company was founded by the Respondent before marriage and registered as a business name and after marriage he changed it into a limited liability company and brought in the Applicant as a shareholder.
  9. It is the said company that generated much income to the family that enabled them to educate the two children in high costs institutions as per the evidence on record.
  10. There was also another company known as Seven Star Stone Limited where the Respondent was a major shareholder and according to him the financing came from a loan from Prime Bank as well as some lending from his father.



11. It was his case that he later sold the same to his co-director.
12. There were other properties in particular some land in Ahmedabad India as well as bank accounts in India and other foreign countries which the Applicant in my view was unable to produce tangible evidence.
13. The borne of contention that ran across both evidence is the contribution by each of them to the above properties.
14. The Applicant contented in respect to the matrimonial home that part of the purchase consideration came from her cousin one Manoj Shah who lived in United Kingdom and advanced her 60,000 sterling pounds which was equivalent to Kshs.7,000,000 at the then exchange rates.
15. The Respondent argued that although this was true, he later repaid the said amount by way of hard cash whenever the said lender came to Kenya. It was therefore not true that, that was the only money that purchased the property which already had a house.
16. The Respondent on his part testified that other than the land he did improvements in the house hence making it more habitable and comfortable for the family.
17. As regards the companies the Applicant testified that she contributed indirectly by cooking for the Indian workers who worked there and by taking leave sometimes so that she could baby sit her children.
18. Overall, she testified that she was never paid any salary or dividends at all while working for the company despite being a shareholder.
19. The Respondent emphasized that he worked throughout for the companies and that there was no direct monetary contribution on the part of the Applicant and therefore she should not be heard to lay any claim over it.
20. The company Seven-Star Stone Limited he said had nothing to do with the Applicant and in any case, he had already sold the same to his co-director.
21. He denied that he was holding any foreign accounts outside the jurisdiction of this court and he put the Applicant to strict proof.
22. It was therefore the Applicant's case that the matrimonial property ought to be divided equally as she made equal contribution to its acquisition.
23. Other than the documentary evidence relied on by the parties they also produced two valuation reports indicating that the value of the Gigiri property was worth kshs.80 million and 95 million respectively. Because the parties could not agree they produce the two reports by consent.
24. The Respondent on the other hand denied the Applicant's assertion arguing that if there was any contribution then it was so minimal that it could not warrant her get half of the properties.
25. As indicated above the parties filed written submissions which I have perused and need not reproduce the same here.
26. The Applicant on her part while relying on Kamore v. Kamore & Another CA No 63 of 1998 insisted that the property was already registered in their joint names and consequently the same ought to be divided equally.



27. She also relied on the provisions of Section 23 of the Registration of Titles Act and Section 26 of the *Land Registration Act* to point out the indivisibility as well as the sanctity of joint ownership of a registered parcel of land such as the one at hand.
28. She insisted that she directly and indirectly contributed to the acquisition of the assets and in particular taking care of the family welfare as a wife and a home maker.
29. The Respondent on the other hand submitted that the court did not have jurisdiction to deal with the properties outside this country and relied on *Stephen Blanchet v. Akach Adhiambo Langi* (2009) eKLR.
30. As regards the companies namely Deluxe Trading Company he submitted that the same was not within the jurisdiction of the court and that the Applicant ought to bring herself under the purview of the *Companies Act*.
31. He submitted as well that the said company was registered in 1991 before the marriage and therefore her contribution was minimal in the circumstances.
32. He submitted that the Applicant was simply made a partner in the company because legally it was required that a company must have more than one director and that he had no other family member except the Applicant.
33. The same argument he raised regarding Seven-Star Stone Limited which he said he had already relinquished his shares.
34. On the question of the Applicant's contribution towards acquisition of the properties he submitted as stated earlier that the 60,000 sterling pounds from the Applicant's cousin was refunded.

#### **ANALYSIS AND DETERMINATION**

35. Section 6 of the *Matrimonial Property Act* No. 49 of 2013 describes matrimonial property to mean the matrimonial home or homes, household goods and effects in the matrimonial home or homes and any other immovable and movable property jointly owned and acquired during the subsistence of the marriage.
36. Section 7 of the *Matrimonial Property Act* No. 49 of 2013 states that 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.
37. Section 8 of the *Matrimonial Property Act* No. 49 of 2013 states that where one spouse acquires property before or during the marriage and the property acquired during the marriage does not become matrimonial property, but the other 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.
38. In *NGV v CNV* also known as *CHM* (Matrimonial Cause 6 of 2021) [2022] KEHC 16645 (KLR) (6 December 2022) (Judgment), at paragraphs 46 and 47, the court quoted with authority the case of *TMW vs FMC* (2018) eKLR where the court adopted the definition under Section 6 of the *Matrimonial Disputes Act* No. 49 of 2013 to hold “ that for property to qualify as matrimonial property, it must have been acquired during the subsistence of marriage unless agreed by both parties that such property will not form part of the matrimonial property. The burden of proof in law lies



with the party alleging that such and such property indeed was acquired during the subsistence of the marriage and therefore constitutes matrimonial property.

However, the mere fact that property is acquired during coverture does not automatically entitle each spouse or party a share after dissolution of the marriage. One has to prove contribution whether direct or indirect. The onus of proof, however, is subject to a rebuttable presumption of law under Section 14 of 'Matrimonial Properties Act which provides; '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.'

39. I have cited the above authorities because they are generally in tandem with the matter at hand.
40. Having carefully perused the proceedings herein including the evidence tendered as well as the submissions on record I think the first issue to determine is whether in light of the joint registration and ownership of the matrimonial home the same ought to be shared out equally as prayed by the Applicant.
41. There are plethora of now notorious authorities including but not limited to Echaria vs. Echaria, Kivuitu. vs. Kivuitu, Kamore vs. Kamore and many other recent decisions to the effect that each of the warring parties must demonstrate how they each contributed to the acquisition of the matrimonial properties.
42. That it is no longer fashionable to imagine that because one was a housewife and a home maker she should simply go with minimal share because she did not contribute monetarily. The act of keeping the home habitable and comfortable for the other partner as well as taking care of the children and improving the home environment and making it warm and hospitable must now be taken into consideration.
43. The case at hand is such an example. The parties did not dispute that the Applicant for the period she stayed at home failed to make the home habitable and took care of the two boys. It is true that the Respondent majorly contributed to the financial affairs in the home and in particular took care of the children's educational needs in the top learning institutions they went through.
44. I do not think it is also unfair to suggest that other than schooling in those schools they would come back home and obviously find their mother who readily received them while the Respondent was equally busy in the company or office generating income for the family.
45. To be fair it sounds simplistic but I respectfully think that non-monetary contribution may not necessarily be as easy as it sounds to prove and I think that is why the developing jurisprudence now is that the courts must of necessity take it into account.
46. At the same time the sum of 60,000 sterling pounds advanced by the Applicant's cousin to purchase the property could in my view be termed as the Applicant's contribution. I state so because I did not find any evidence to show that the Respondent repaid the same despite his evidence on oath.
47. Mr. Manoj Shah in his later dated 15<sup>th</sup> April 2003 stated that;  

“.... There is no loan agreement involved and I give these monies due to love and affection I have for my sister.”
48. If the Respondent repaid the above sum, then he ought to have demonstrated an iota of such refund.



49. More importantly since he was married to the Manoj's cousin he benefited from his magnanimity and therefore I hold that the said amount was the Applicant's monetary contribution towards the purchase of the property.
50. Finally, by registering the property in their joint names, the parties intended that they were to own it equally. I do not think they envisaged these proceedings at the time they were carrying out joint registration. Now that it has happened, they must live with their original intention.
51. Consequently, I hold that the said LR No. 9104/81 was jointly purchased and maintained and improved by the two parties herein and they shall share it on equal basis.
52. As regards the two companies that is Deluxe Trading Company Limited as well as Seven Star Stone Limited, I agree with the Respondent that the best place to litigate the same is at the Commercial Division of this court which is seized with jurisdiction. I state so because much has happened between the time the Applicant was a shareholder and her resignation from the two companies.
53. There are also other shareholders who are not parties in this cause. Should the court rule in whichever direction, they shall be disadvantaged because they were not heard.
54. I am also confident that the *Companies Act* insulates the Applicant in her quest for her rights in the two entities and able to remedy any wrongs that might have been committed against her interests.
55. Finally, on the various bank accounts enumerated in the Originating Summons, the court makes no findings for want of adequate evidence. During cross examination for instance the Applicant was unable to establish the same nor prove that there were funds in the said accounts.
56. The same goes with capital assets outside the jurisdiction of the court like the property in Ahmedabad India. There was no prove that it existed.
57. Of course, nothing stops the Applicant from litigating over them outside this jurisdiction.
58. Having reached the above conclusion the next question is to determine which of the two valuations the court shall admit as evidence. The differences of Kshs. 15 million is too wide. At the same time the valuations were done over five years ago. The value, putting all the factors constant, must have gone up by now.
59. To be fair to the parties it is necessary that fresh valuations be undertaken so that at the level of division the parties are able to ascertain the current actual valuation.
60. Since they disagreed already in the first valuation each of them shall commissions their respective valuer and the report submitted to court for further directions unless they agree mutually on which one to take.
61. This does not of necessity mean that the parties may not agree on joint valuation. It will be economically viable to agree but again the court leaves it for them to settle.
62. Further and after an appropriate valuation has been reached the parties shall be at liberty to buy out each other and alternatively dispose the same by public auction and share out the proceeds equally less any liabilities.

## **CONCLUSION**

PARAGRAPH 63.

**It is hereby ordered that:-**



- (a) The property namely LR NO. 9104/81 situate at Chemilia Close Gigiri Nairobi registered in the joint names of the Applicant and the Respondent is matrimonial and shall be shared equally between the Applicant and the Respondent and for avoidance of doubt on 50:50 basis.
- (b) The above property shall be valued by either a joint valuer appointed by the parties and or each of the parties be at liberty to appoint its valuer.
- (c) In the event of separate valuers, the said valuations shall be submitted to the court for further directions unless they both agree on the outcome of the valuation.
- (d) The above valuation exercise shall be undertaken within 60 days from the date herein.
- (e) The parties shall thereafter buy out each other or in the event of disagreement dispose the property vide a registered Auctioneer in a public auction and the proceeds be shared out equally within 90 days after the valuation.
- (f) Each party shall meet the costs of respective valuation and in the event of a joint valuation they shall share the same equally.
- (g) The Respondent shall grant free and unhindered access to the appointed valuer or valuers for that matter when carrying out the exercise.
- (h) The prayers regarding the rest of the properties whether Companies or Bank Accounts as well as capital assets outside the jurisdiction of this court are disallowed.
  - (i) Each party shall meet its own costs.

**Dated signed and delivered at Nairobi via video link this 4<sup>th</sup> day of December 2025.**

**H K CHEMITEI**

**JUDGE**

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