

6. That this Honorable Court be pleased to grant such further or other relief as may be just in the circumstances;
 7. That the Respondent be ordered to pay the costs herein.
2. The parties herein were married on 18th December, 1999 and divorced through an order of the court dated 11th July 2023. The applicant has stated that during the marriage, the property Gatari/Weru/21xx measuring 2.024 hectares was acquired. The said property has since mutated to Gatari/Weru/86xx, 86xx, 86xx, 86xx, 86xx, 86xx, 86xx, 86xx, 86xx, 86xx, 86xx, 86xx, 86xx, 86xx and 86xx. According to the applicant, the matrimonial property was acquired through their joint efforts, but the respondent intends to dispose of it and all other properties they acquired together. She stated that the respondent has already put plans in motion to sell the property.
 3. She stated that the said land is where she is living and drawing an income to cater for her children's school fees. If it is alienated, she will have nowhere to live and has no other source of income. That she contributed towards acquisition of the land in monetary and non-monetary terms. It was her assertion that the respondent had already sold another property LR. Txx/Dagoretti ('Dagoretti property') from which they had been collecting rent and he refused to share the proceeds from it.

Replying Affidavit

4. The respondent opposed the OS stating that it is a non-starter, misconceived and fatally defective. That he acquired the named property long before he met the applicant and so she should not claim any share in it. That the property no longer exists and it has since mutated to Gatari/Weru/86xx-86xx. He produced a copy of the mutation form as proof. He stated that he subdivided the land intending to give the portions to the applicant and Children and not to sell them.
5. That he already transferred parcel number Gatari/Weru/86xx to the applicant and she holds a good title for it. He urged the court to let him transfer the other subdivided portions to his children. He conceded that he sold another piece of land that he owned in Dagoretti because he was in dire need of medical treatment in India and he needed to raise money for the treatment. At the time, the applicant was engaging in adultery and was not available to care for him. He urged the court to find that the application is fatally defective and it has been overtaken by events.

Supplementary Affidavit

6. The applicant filed a supplementary affidavit stating that indeed Gatari/Weru/21xx no longer exists and the matrimonial home now sits on Gatari/Weru/86xx, 86xx and 86xx. She stated that she contributed money towards development of LR. Txx/Dagoretti, which the respondent sold without her consent or knowledge. That the respondent transferred parcel number Gatari/Weru/86xx to her, not as a gift but because he owed her sister some money.
7. She stated that she is willing to waive her interest in LR. Txx/Dagoretti, if she gets her fair share of the matrimonial property - part of which she farms - in order to pay school fees for her son who is in college. She farms bananas, maize oranges, mangoes and other crops to sustain herself. She also wants the matrimonial home which is the only place she has called home for 24 years until her divorce. She stated that even before the divorce, the respondent had deserted the matrimonial home and she is still apprehensive that he wants to sell the matrimonial property just to spite her.



Respondent's Further Affidavit

8. In his further affidavit, the respondent deposed that the applicant did not participate in the purchase of land Gaturi/Weru/21xx since she was not married to the applicant at the time of its acquisition. When he married the applicant, she was a househelp in his house and they lived on the Dagoretti property at first before moving to Embu. That the properties are not matrimonial property since they were acquired before the applicant got married to the respondent.
9. He stated that he willingly gave the applicant land parcel number Gaturi/Weru/86xx when their marriage was unstable so that she could have a place to stay in the event of the marriage breaking down. That the applicant failed to transfer the land into her name. He said that the land was not given to repay any debt owed to the applicant's sister as she had claimed.

Summary of the Evidence at the hearing

10. The Originating Summons was heard through viva voce evidence.
11. PW1 was SKN the 24-year-old son to the applicant and respondent. He stated that the respondent sold the Dagoretti property LR.Txx/Dagoretti for Kshs.43 million and its value was between Kshs.40-50 million at the time. After this sale, the respondent did not disclose any details to them and they never saw the proceeds thereof. He stated that the applicant farms that matrimonial property in order to keep up with his school expenses. He said that in 2012, the respondent sought for treatment for a medical condition he had, at several hospitals, and he underwent surgeries including in India. In cross-examination, he stated that he was not born when the Dagoretti property was acquired but he knows that it was sold for Kshs.43 million although he could not prove this.
12. PW2 was the applicant who stated that the matrimonial property was subdivided without her knowledge and consent, and the Dagoretti property as also sold without her knowledge. She wants the matrimonial home because it is her only home and source of livelihood. She also needs it because she farms there and uses the money to sustain herself and to support her children. She stated that she was informed by a neighbor that the Dagoretti property had been sold for between Kshs.40-43 million. She is interested in the matrimonial home and the remaining properties can be divided between her and the respondent.
13. On cross-examination, she stated that when she got married to the respondent in 1999, she moved to the Gaturi/Weru property, that has since mutated into Gaturi/Weru/86xx-86xx. She admitted that the property was already there and she started living on it. That it was acquired in 1989 before she got married to the respondent and it already had a house on it. She stated that in 1997, the respondent did not have a wife but he had children who were living on that land and at the time, she was his househelp. She said that when she got married to the respondent, she lived with him in Nairobi on the Dagoretti property before they relocated to Embu.
14. Since she was not involved in selling the Dagoretti land, she wants the respondent to compensate her with another piece of land. She said that she bought Parcel No. Gaturi/Weru/78xx from Peter Kinyanjui and it is registered in her name. She also conceded that the respondent gave her Gaturi/Weru/86xx to be registered in her name. As for LR. Txx/Dagoretti, she stated that when the respondent married her, he had already bought the property and it had a mabati structure built on it. That she helped to develop it especially when the respondent was living outside the country for a while.
15. She said that she did not know that it was sold to meet the respondent's medical expenses but she knew that he was sickly between 2012-2014. With regard to Gaturi/Weru/60xx-60xx, she found the



respondent with them when she got married. They were unutilized and she turned the land into arable land where she plants food. She stated the same about all the other properties; that when she got married to the respondent, he already owned them.

16. RW1 was the respondent who stated that he purchased the land Gaturi/Weru/21xx together with a house built on it in 1988. He married the applicant in 1999 and it is not true that she developed anything on the land. He stated that the land is not matrimonial property since it was acquired before the marriage. He has since subdivided the said land into Gaturi/Weru/86xx-86xx. He then gave the applicant Parcel No. Gaturi/Weru/86xx but she did not register it into her name despite him signing all the relevant documents for her. That the Dagoretti property was also bought before the applicant got married to the respondent and so it does not amount to matrimonial property.
17. He stated that since he bought the properties, the applicant has never contributed in developing them in any way and that he is the one who even planted the crops on it which she alleged to have planted. When a part of the land was compulsorily acquired by the government, it is him who was paid and not the applicant as she claimed, because it was his name on the title document. That since the Court barred him from using his property, he has nowhere to live and he is squatting with friends in Machakos. That he is almost destitute and that the applicant has no right to claim any of his properties.

Parties' Submissions on the summons

18. The parties filed their written submissions as directed.
19. In her submissions, the applicant relied on Article 45(3) of the *Constitution* and Section 7 of the *Matrimonial Properties Act*. She stated that she is entitled to half of the properties since she contributed to their acquisition. She relied on the cases of *CWM v JPM* [2017] KECA 211 (KLR), *JGK v AMW* [2021] KEHC 6302 (KLR), *MNJ v WCK* [2024] KEHC 8509 (KLR), *AKM v NNN* [2019] KEHC 7687 (KLR) and *Federation of Women Lawyers Kenya (FIDA) v Attorney General & another* [2018] KEHC 7130 (KLR). She argued that the respondent failed to prove how much money he spent on his treatment when he sold the Dagoretti property. She claimed half of the remaining properties and stated that she contributed towards their development.
20. The respondent submitted that the properties named in the application were not acquired through the joint efforts of the applicant and the respondent. That their marriage was between 1999-2023 but the properties were acquired long before the start of their marriage. That parcel number Gaturi/Weru/21xx was bought with a house already on it, thus the applicant never contributed in developing the said land. In fact, the respondent was farming the land before the applicant moved there in 1993.
21. As for the Dagoretti property, he submitted that the applicant alleged that she had helped build the rental houses on it, but she did not demonstrate this contribution through evidence availed to the court. He relied on sections 2, 6(1), 7 and 13 of the *Matrimonial Property Act* and the cases of *Federation of Women Lawyers Kenya (FIDA) v Attorney General & another* [2018] KEHC 7130 (KLR) and *JOO v MBO; Federation of Women Lawyers (FIDA Kenya) & another (Amicus Curiae)* [2023] KESC 4 (KLR).

Issue for Determination

22. The issues for determination are the following:
 1. Whether the properties in question, or any of them, are matrimonial property; and
 2. How the properties should be divided.



Analysis and Determination

23. It is a not in dispute that the parties herein were married on 18th December 1999, and that their marriage ended through an order of the court delivered on 11th July 2023. According to section 14 of the *Matrimonial Property Act*, matrimonial property means all the property acquired during the marriage. It 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.” [Emphasis added]
24. Matrimonial property is defined under section 6(1) of the *Matrimonial Property Act* as follows:
- “(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.” [Emphasis added]
25. From the evidence adduced, it is clear that Land parcel number Gaturi/Weru/21xx- which has since mutated to Gaturi/Weru/86xx, 86xx, 86xx, 86xx, 86xx, 86xx, 86xx, 86xx, 86xx, 86xx, 86xx, 86xx, 86xx, 86xx and 86xx - was purchased before the marriage was entered into. This was stated by both parties in their testimonies. Moreover, the respondent produced DExh.2 which is a letter dated 10th August 1994 from Kenya Finance Corporation acknowledging that the respondent had fully settled his loan with the financier towards purchase of Gaturi/Weru/21xx.
26. There is on record, a sale agreement for the sale and purchase of land parcel number Gaturi/Weru/78xx from one Pauline Rimi Ndirangu to the applicant. It is dated 11th September 2012, and the applicant testified that it was registered in her name even though it was the respondent who effected the transaction. The respondent stated that the applicant cannot claim that she has no home yet she has this piece of land.
27. The applicant stated that she rehabilitated parcel numbers Gaturi/Weru/60xx, 60xx, 60xx, 60xx and 60xx from forest to arable land. In response, the respondent testified that the applicant did no such thing, and that she has been leasing those properties to 3rd parties. In his testimony, the respondent said that the property known as Mwanamukia Plot No. 9x was bought between 1984-1985, long before the marriage. At some point, he could not manage it and so he sold it.
28. With regard to the Dagoretti property LR. Txx/Dagoretti, the respondent stated that by the time he married the applicant who was his house help, he had already bought the property and developed it. On the other hand, the applicant said that she contributed towards developing the property when she



married the respondent. In her testimony, the applicant conceded that all the named properties were acquired before her marriage to the respondent.

29. We must now to answer the question: what constitutes matrimonial property in this case? The evidence adduced clearly, and undoubtedly, shows that none of the named properties can be classified as matrimonial property since they were acquired long before the marriage between the parties began. Further, no evidence of the applicant having made any contribution to the development or maintenance of those properties was availed in Court.
30. The second question is that of division, if there had been any matrimonial property. The applicant claimed that she contributed towards the development of these properties. As already indicated, she did not demonstrate this assertion. If this issue were ripe for determination, which it is not, section 7 of the *Matrimonial Property Act* would have been applied which provides:

“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. Under section 2 of the *Matrimonial Property Act*:

“contribution” means monetary and non-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;”

Conclusions and Determination

32. As already noted, the applicant’s contribution to the acquisition of the properties, whether monetary or otherwise, has not been demonstrated since their marriage as the properties were acquired before her marriage to the respondent. This means that there is completely no basis for apportioning the said properties because they cannot be considered to be matrimonial property.
33. However, it is important that the court takes notice of the fact that land parcel number Gaturi/Weru/78xx was bought during the subsistence of the marriage, and it was registered in the name of the applicant. The respondent has laid no claim on it despite having been central in the purchase transaction. It is also noted that after the respondent subdivided parcel number Gaturi/Weru/21xx into 16 portions, he voluntarily gave Gaturi/Weru/86xx to be transferred to the applicant and he even signed the relevant documents for it to that end. He produced these documents in support of his case. These 2 properties are however, not part of the properties listed in the OS. It would defeat logic to go any further with the arguments herein as the issues are now settled.
34. In my view, the OS lacks merit and it is hereby dismissed as there is no proved matrimonial property to be distributed.
35. Since the properties Gaturi/Weru/86xx, 86xx, 86xx, 86xx, 86xx, 86xx, 86xx, 86xx, 86xx, 86xx, 86xx, 86xx, 86xx and 86xx have been encumbered with cautions by the applicant claiming a beneficiary’s interest, the said encumbrances are hereby discharged, and the Land Registrar, Embu is



directed to lift those cautions forthwith so that the respondent can access the properties to deal with them as he deems fit.

36. Orders accordingly.

DELIVERED ELECTRONICALLY, DATED AND SIGNED AT EMBU HIGH COURT THIS 3RD DAY OF DECEMBER, 2025, PURSUANT TO NOTICES ISSUED ON 24TH AND 26TH NOVEMBER 2025, AS TO ELECTRONIC DELIVERY.

R. MWONGO

JUDGE

