

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MILIMANI
FAMILY DIVISION
MATRIMONIAL CAUSE NO E085 OF 2021 (O/S)

AGNES WANJIRU NG'ANG'A **APPELLANT**

VERSUS

RAPHAEL MUIGAI IKAME **RESPONDENT**

JUDGEMENT

1. Marriage, in its inception, is a union of hearts and minds; in its dissolution, it often devolves into a cold calculation of cents and shillings. This case is an adjudication of the debris of a union that began with the optimism of youth in 1996 and ended in acrimony of separation in 2013.
2. The Petitioner has approached this Court seeking her share of the kingdom built over 17 years. The Respondent stands at the gates, armed with a fortress of receipts and bank statements, contending that the kingdom is his alone, built by his sweat and financed by his debts. This Court now acts not just as an arbiter of law, but also as an auditor of a life shared.
3. The history of this couple reads like a classic novel of diverging fortunes. When their paths first crossed in 1996, the disparity was stark. The Petitioner was a student of catering, her tuition largely funded by her father. The Respondent was a budding civil servant, an Accountant who would

eventually rise to become a meticulous auditor. They solemnized their vows in 2003 at St. Matia Mulumba Catholic Church, Thika. For a decade and a half, they built a life. The Respondent climbed the ladder of the civil service, securing loans and acquiring assets. The Petitioner, by her account, was the engine in the background—managing the home, raising two children, and running poultry and dairy farming enterprises that fed the family.

4. But the centre could not hold. In June 2013, following what the Respondent describes as a 'botched robbery' and the Petitioner describes simply as 'leaving for work', the physical separation occurred. The Petitioner never returned. The legal severance followed in 2016 with a Decree Absolute. Today, they fight over what remains.
5. The trial before this Court revealed a striking dichotomy in the presentation of evidence. On one side stood the Respondent, true to his profession as an Auditor. He presented a mountain of paper: loan application forms dating back to 1997, payslips showing deductions that bled into his take-home pay for years, and title deeds. His narrative was one of financial precision. He could account for every shilling used to purchase the matrimonial home and the lands in Makuyu.
6. On the other side stood the Petitioner, whose case rested on the fragile foundation of oral testimony. When pressed for documentary proof of her financial contribution—receipts for the poultry business, bank statements for the funds she allegedly transferred—her refrain was a melancholic echo: *"I do not have any document to show. The documents are in the former house... All documents were left in the house when I left my marriage."*
7. While this Court is not blind to the reality that departing spouses rarely pack filing cabinets during a separation, the law of evidence is exacting. Section 107 of the Evidence Act demands that he who asserts must prove. The

Petitioner asks this Court to take a leap of faith; the Respondent asks us to look at the ledger.

8. The procedural journey of this dispute is illustrative of the often-arduous path to justice in matrimonial causes. The marriage was legally dissolved in Thika Chief Magistrate's Court Divorce Cause No. 53 of 2013. The decree absolute was issued on 21 November 2016. The Petitioner initially approached the lower court via Thika CMCC Matrimonial Cause No. 153 of 2017. This matter was subsequently withdrawn due to a lack of pecuniary jurisdiction, necessitating the filing of the present suit on 5 November 2021. The matter proceeded for *viva voce* hearing on 11 June 2025.
9. The Petitioner prays for the following specific reliefs:
 - a) A declaration that the assets listed in the Petition are matrimonial properties and that the Respondent holds them in trust for the Petitioner.
 - b) An order for the division of the said matrimonial properties between the Petitioner and the Respondent in equal shares or such other proportions as the Court may deem fit.
 - c) Any other order that the Court may deem just and fit to grant.
 - d) Costs of the Petition.

The Petitioner's Case

10. The Petitioner's case is anchored on the principle that marriage is a partnership of equals. She asserts that during the 17 years of coverture, she and the Respondent acquired diverse assets through joint efforts. The Petitioner relies on section 7 of the Matrimonial Property Act, arguing that her contribution was both monetary and non-monetary.

11. In her testimony, the Petitioner catalogued the following assets as the subject of the dispute:

	Asset	Current Status	Petitioner's Claim/Contribution
1	Thika Municipality Block 24/1465	Matrimonial Home, registered in the name of the Respondent	Supervised construction. Contributed through proceeds from farming
2	Thika Municipality Block 24/1466	Disposed of/swapped	Joint acquisition
3	Makuyu/Kimorori Block III/4247	Joint registration	Direct payment from debit account
4	Makuyu/Kimorori Block III/4248	Joint registration	Direct payment from debit account
5	Makuyu/Kimorori Block III/4249	Registered to the Respondent	Proceeds from cattle rearing
6	Makuyu/Kimorori Block III/4250	Registered to the Respondent	Proceeds from cattle rearing
7	Mitubirir/Wempa/Block 1/6233	Registered to Solomon Mugo	Paid Kshs 150,000/- cash
8	Mum's Cafe hotel	Defunct business	Paid Kshs 100,000/- for equipment; managed the business
9	Motor vehicle KBJ 260F Toyota Corolla	Sold	Proceeds from farming given to the Respondent
10	Motor vehicle KBR 927D Toyota Volt	Written off	Proceeds from farming
11	Motor vehicle KCH 255L	Registered to the Respondent	Acquired from insurance proceeds of KBR 927D

12. The Petitioner's evidence regarding her contribution was largely oral. With regard to direct financial contribution, the Petitioner claimed to have paid

Kshs 450,000/= from her debit account and Kshs 20,000/= from a children's kitty towards the purchase of the Makuyu lands. She also claimed a cash contribution of Kshs 100,000/= towards Mum's Cafe and Kshs 150,000/= towards the Mitubiri land.

13. Regarding her indirect financial contribution, the Petitioner asserted that proceeds from her employment at Blue Post Hotel and her farming activities (poultry and dairy) were channelled into the family kitty, often given to the Respondent in cash.
14. With respect to her non-monetary contribution, the Petitioner emphasised her role as a homemaker, stating that she was the one who went to the Lands Office and was on the ground during construction, doing the supervision. She argued that her domestic labour enabled the Respondent to pursue his career and secure loans.
15. A significant hurdle in the Petitioner's case was the absence of documentary evidence. During cross-examination, when pressed for payslips, bank statements, or receipts to prove her farming income or direct payments, the Petitioner repeatedly stated: *"I do not have any document to show. The documents are in the former house... All documents were left in the house when I left my marriage."*
16. Regarding the Mitubiri land, the Petitioner claimed that her father was a witness to her contribution, but failed to call him, stating that he was unwell. The Petitioner did not provide any medical evidence to excuse his absence or Affidavit to support her claim.

The Respondent's Case

17. The Respondent mounted a robust defence, contending that the properties in question were acquired solely through his personal industry and financial risk. He relied on the doctrine of separate property arguing that the Petitioner's contribution was negligible and non-existent. He produced a comprehensive bundle of documents, including: Loan Application Forms from Ukaguzi Sacco and Equity Bank dating back to 1997, 1999, 2001, 2003, 2006, 2007, 2012, 2013, and 2016; Payslips showing continuous deductions for these loans over the course of the marriage and post-separation; and Official Searches proving the ownership status of the disputed lands and vehicles.
18. Regarding the matrimonial home (Thika Municipality Block 24/1465), the Respondent admitted that this was the family home, but averred that he purchased the plot for Kshs 160,000/= in 1998, while the Petitioner was a student, and financed the Kshs 5 million construction cost entirely through loans.
19. The Respondent conceded Makuyu properties (4247 & 4248) were registered in joint names but argued that he paid the full purchase price of Kshs 3.6 million. He characterized the inclusion of the Petitioner's name as an act of empowerment rather than an acknowledgment of financial contribution.
20. The Respondent vehemently opposed the inclusion of Makuyu Block 4249, 4250, and motor vehicle KCH 255J, presenting evidence that these were acquired after the Petitioner had deserted the home in June 2013.

Analysis & Determination

21. To determine this dispute, this Court must navigate the shifting tides of family law in Kenya. Article 45(3) of The Constitution promises equality. However, as the Supreme Court eloquently clarified in ***JOO v MBO; Federation of***

Women Lawyers (FIDA Kenya) & Another (Amicus Curiae) KESC 4 (KLR), equality is not a mathematical straightjacket. It does not mean a passive spouse can automatically claim half of the windfall. It means that parties get that they contributed.

22. Upon meticulous review of the pleadings, evidence and the submissions by both parties, the question before this Court is not whether the Petitioner is entitled to a share – she undoubtedly is, by virtue of her non-monetary contribution recognized under Section 2 of the Matrimonial Property Act – but rather, how much?
23. A critical legal hurdle in this case is the Petitioner's failure to adduce documentary evidence. She relies on the assertion that documents were left in the matrimonial home. While the Court is sympathetic to the realities of acrimonious separations, the law of evidence remains strict.
24. Section 107 of the Evidence Act places the burden of proof on the person asserting a fact. The Petitioner asserted she paid Kshs 450,000/= via bank transfer. This is a specific, verifiable fact. Banks retain records for at least seven years. The failure to produce bank statements, even via a court order or discovery, weakens her claim of *direct* financial contribution.
25. Turning to the specific assets, I have carefully weighted the assets listed in the Petition against the evidence provided.
26. **The Matrimonial Home: Thika Municipality Block 24/1465:** This property is the heart of the dispute. It is where the children were raised and where the marriage lived and died. The Respondent argues that he bought the plot and built the house alone, backed by loans that he is still servicing. The Petitioner argues she was on the ground, supervising construction and feeding the workmen.

27. The Court recognizes that the Respondent provided the capital. His payslips are a testament to the financial burden he bore. However, this Court cannot discount the 'sweat equity' of the Petitioner. For 17 years, she managed the domestic sphere. As noted in the recent **2024 Economic Survey** published by the Kenya National Bureau of Statistics, unpaid care work is a multi-trillion-shilling pillar of our economy. To ignore it would be constitutional heresy. In *In AWM v JGK [2021] KEHC 4780 (KLR)* the Court recognized that non-monetary contribution is often 'priceless' and must be valued.
28. Yet, equity must also look at the debts. The Respondent has shouldered the mortgage alone since 2013. To award a 50:50 split would be to unjustly enrich the Petitioner at the expense of the Respondent's post-separation labour. I, therefore find that the home is matrimonial property. The Petitioner is entitled to a 40% share, and the Respondent 60%, reflecting the disparity in financial input and the Respondent's exclusive debt servicing.
29. **Makuyu/Kimorori Block III/4247 & 4248:** These lands present a different legal complexion. They were acquired in 2012 and registered in the joint names of both parties. Section 14(b) of the Matrimonial Property Act creates a rebuttable presumption that where property is held jointly, the beneficial interests are equal. The Respondent attempted to argue that he paid for them entirely and only included the Petitioner's name to empower her. This argument fails to impress. In law, the registration of a spouse as a joint owner is a powerful declaration of intent. It operates as a gift, an advancement, a crystallization of the concept of "two becoming one". One cannot empower a spouse on the title deed during the marriage and disempower them in Court during the divorce. The title deed speaks louder than the Respondent's regrets. I, therefore, find that these properties are owned 50:50.

30. **The Post-Separation Assets:** The Petitioner laid claim to **Makuyu Block 4249 & 4250** and Motor Vehicle **KCH 255J**. The evidence shows these were acquired in late 2013 and 2016 respectively—after the Petitioner had left the matrimonial home.
31. The Petitioner left the matrimonial home in June 2013. The marriage was legally dissolved in 2016. Does the subsistence of the marriage under Section 6 of the Act extend to the period of separation?
32. In ***P N N v Z W N [2017] KECA 753 (KLR)***, the Court of Appeal clarified that while the marriage technically subsists until the decree absolute, the joint effort required for matrimonial property typically ceases at separation. If one spouse acquires property post-separation using their own funds, without any contribution (financial or emotional) from the estranged spouse, that property is generally separate. The Court stated:
- “No fifty-fifty philosophy would grant such a party any right to property acquired without their contribution and notwithstanding their negation or diminution of the efforts towards its acquisition.”*
33. Marriage is a partnership. When the partnership ceases to function, the accrual of joint assets generally ceases, too. The Petitioner cannot reap where she did not sow. She was not present to contribute to these acquisitions, neither financially nor emotionally. They are the fruits of the Respondent’s solitary industry.
34. Regarding the land at **Mitubiri/Wempa Block 1/6223**, the search reveals it belongs to a stranger to this suit, Solomon Mugo. This Court cannot distribute what the parties do not own. Regarding Mum’s Café, the business is defunct. This Court cannot divide a memory.

35. **Thika Municipality Block 24/1466:** the Respondent argues that this property belongs to a limited liability company, Carta Oakhill School Limited. In *SNK v MSK & 5 others [2015] KECA 1010 (KLR)*, it was held that company assets are distinct from personal assets of the spouses. However, courts can lift the corporate veil if the company is a sham or an alter ego, used to conceal matrimonial assets, as established in *Jepkemoi v Zaburi Enterprises Company Ltd & 2 others [2024] KEHC 2343 (KLR)*. In this instance, the Petitioner did not plead fraud or request the lifting of the corporate veil. She provided no evidence that Carta Oakhill School is a sham entity. Without such pleading and proof, the Court must respect the separate legal personality of the company. This property is, therefore, excluded from the division.
36. Regarding the vehicles KBJ 260F and KBR 927D, the evidence shows they were disposed of during the marriage (sold/written off). There is a presumption that proceeds from such disposals were used for the family's benefit unless dissipation is proven. The Respondent testified the proceeds paid school fees, and the Petitioner offered no evidence to the contrary.
37. In the end, justice in matrimonial causes is an exercise in balancing the ledger of a life lived together. It is an imperfect science, but it strives for fairness.
38. Accordingly, I make the following orders:
- (i) It is hereby declared that the following properties are matrimonial property acquired during the subsistence of the marriage between the Petitioner and Respondent:
 - a) Thika Municipality Block 24/1465 (The Matrimonial Home).
 - b) Makuyu/Kimorori Block III/4247.

- c) Makuyu/Kimorori Block III/4248
- (ii) The said matrimonial properties in (i) above shall be distributed as follows:
- a) Thika Municipality Block 24/1465 – Petitioner 40% and Respondent 60%
 - b) Makuyu/Kimorori Block III/4247 and 4248 - 50:50 between Petitioner and Respondent
- (iii) A joint valuation of the properties listed in (i) shall be conducted by a registered valuer agreed upon by the parties within 30 days of this Judgment. In default of agreement, the Deputy Registrar shall appoint a valuer at the cost of both parties;
- (iv) The Respondent is granted the first option to buy out the Petitioner's 40% share in the Matrimonial Home (Thika 24/1465) within 90 days of the valuation report.
- (v) Failing a buyout, the properties shall be sold and the proceeds shared according to the ratios herein determined.
- (vi) Each party shall bear their own costs.

**DATED AND DELIVERED AT NAIROBI THIS 18 DAY OF DECEMBER
2025**

**HELENE R. NAMISI
JUDGE OF THE HIGH COURT**

Delivered on virtual platform in the presence of:

For Applicant: Ms Maina h/b Njiraini

For Respondent: Ms Yala h/b Mr. Myaosi

Court Assistant Lucy Mwangi

Judgement