



JJC v NKC (Civil Suit 10 of 2023) [2025] KEHC 19128 (KLR) (19 December 2025) (Judgment)

Neutral citation: [2025] KEHC 19128 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL SUIT 10 OF 2023
E OMINDE, J
DECEMBER 19, 2025

IN THE MATTER OF THE CONSTITUTION OF KENYA, 2010
AND
IN THE MATTER OF SECTION 17 OF THE MATRIMONIAL PROPERTY ACT, 2014
AND
IN THE MATTER OF SECTION 13 OF THE MARRIAGE ACT, 2014
AND
IN THE MATTER OF ORDER 40 RULE 1 AND 2 OF THE CIVIL
PROCEDURE RULES AND SECTION 63(E) OF THE CIVIL PROCEDURE ACT
AND
IN THE MATTER OF SECTIONS 1A, 1B, 3 & 3A OF THE CPA,
CAP 21 AND ALL OTHER ENABLING PROVISIONS OF LAW

BETWEEN

JJC **PLAINTIFF**

AND

NKC **DEFENDANT**

JUDGMENT

- The Plaintiff/Applicant vide Originating Summons dated 14/04/2024 expressed to be brought under Section 17 of the Matrimonial Property Act, Section 13 of the Marriage Act 2014 and Sections 1A, 1B, 3 and 3A of the Civil Procedure Act. The Plaintiff sought for the following orders as follows:



1. That declaration be issued declaring that the Applicant/Plaintiff is entitled to whole share or such other share as the Court may award of the properties (movable and immovable) acquired by the Plaintiff prior to and/or during the substance of their marriage and that the Defendant holds title, interest, ownership and/or possession of the said properties in trust for the Plaintiff/Applicant in their respective shares as the legal owners and cestui que trust respectively namely:
 - a. 31/2 Acres comprised in LR NO. Moisbridge/Moisbridge/Block 7(Lamaiywet)/xxx (PART) being the matrimonial home.
 - b. 0.8 Acres comprised in L.R NO. Bar/Kewamoi "A"3xxxx measuring 50 by 100 located in Kabarnet Town
 - c. Rental units comprised in L.R. NO. Bar/Kewamoi "A" 3xxxx measuring 50 by 100 located in Kabarnet Town
 - d. Parcel of land measuring approximately 2 Acres located in Sessianin Baringo North, Barwesa Division, Lawan Location, Keturwo Sub-location containing a bungalow house.
 - e. Parcel of land measuring approximately 6 Acres located in Katibei area of Cheboryo.
 - f. Parcel of land measuring approximately 6 Acres located Sessianin Baringo North, Baresa Division, Lawan Location, Keturwo Sub-location.
 - g. Motor Vehicle Registration No. KBV 3xxx x Double Cabin
 - h. 2 Freshian cows AND 2 Ayrshire cows.
 - i. 5 dorper sheep.
 - j. Household Items and all other properties acquired during the subsistence of the marriage and personal effects full details whereof are well within the defendant/respondent's knowledge.
 - k. Baringo/Konoo/xxxx measuring 0.03H
 - l. Baringo/Kwamoi "A"/3xxxx measuring 0.08H
 - m. Baringo/Keturwo/2xxx measuring 0.23H
 - n. Baringo/Keturwo/ 29xx measuring 1.53H
 - o. Baringo/Keturwo/ 299xx measuring 0.93H
 - p. Baringo/Keturwo/ 294xx measuring 0.96H
 - q. Motor vehicle Registration KBV 3xxx x
 - r. Motor vehicle Registration KCC 4xx x
 - s. Motor vehicle Registration KCF 8xx x
 - t. Motor vehicle Registration KCA 7xxx
2. That an order do issue directing that the above matrimonial properties to be shared according to the contribution made by the parties towards their acquisition, development and/or improvement or in any other ratio as this honourable Court may deem just and expedient to order/direct.



3. That an order do issue directing that the household items be released to the Applicant/Plaintiff and/or that the same be shared in any ratio as this honourable Court may deem just and expedient to order.
 4. That an order in the alternative to all the above, an order do issue directing that a valuation be carried out on all the above properties and a valuation report be filed in Court by a mutually accepted valuer after which the Court will apportion share as the Court may order in the best interest of justice.
 5. That upon the grant of any and/or all of the foregoing, a permanent injunction do issue restraining the Defendant by himself, his servants, agents and/or employees from interfering with the Plaintiff's lawful enjoyment and quiet possession of the properties awarded to her by this Court.
 6. That such other and/or further orders be granted as the Court may deem fit, fair and expedient in the circumstances.
2. The Application is supported by the Applicant's Affidavit sworn on the same date. She deposed that on or about 1997, she and the Defendant got married when she was in Form 3 and he was in the University and that the union was blessed with four issues.
 3. The Applicant further deposed that the marriage irretrievably broke down and was dissolved vide Eldoret Chief Magistrate's Divorce Cause 47 OF 2020.
 4. The Applicant maintained that she and the Defendant acquired, developed, improved and maintained movable and immovable property during the subsistence of their marriage and that they acquired the following properties:
 5. The Applicant deposed that they constructed a residential house on L.R. No. Moisbridge/ Moisbridge/Block 7 (Lamaiywet)/xxx (PART) in which her family including the Defendant herein and her resided until when they got divorced and he permanently stayed in Nairobi, where he had been working.
 6. The Applicant contended that on or about 5/06/2023 the Defendant locked her house and left her stranded with nowhere to go and that she had to seek assistance of the local chief who helped her to reopen the house and gain access therein and that she also reported the matter to the local police station. She further contended that upon discovery of the fact that she had gained access of the house, the Defendant started intimidating the chief and kicked her out of the house on 10/06/2023, locked the doors and vandalized her kitchen and latrine, that the defendant also threw out her beddings and other personal effects and that the defendant also vandalized her crops and took away her livestock when locking the house.
 7. The Applicant urged that marriage/union having been dissolved, it is only fair and just that the properties they acquire solely and/or with contribution on the part of the Respondent/Defendant be distributed in equally and/or as shall be quantified by this Honourable Court in the best interest of justice.
 8. The Applicant maintained that if it were not for her contribution and support as a house wife, the suit properties would not have been acquired and or developed and that the properties captioned under paragraph 1 (a)-(i) of the Originating Summons are currently in the sole possession and/or control of the Respondent/Defendant to her detriment.



9. The Applicant deposed that in the above premises, she has been rendered vagabond despite the fact that she wasted her youth with the Defendant and she is now unable to actively participate in vigorous economic activities having spent most of her lifetime as a housewife.
10. The Applicant is apprehensive that the Respondent/Defendant upon being served with these pleadings may dispose of the properties without her knowledge to her detriment and that of their children. According to the Applicant she is now facing the danger of losing all her past investment and she will suffer great injustice should the Respondent/Defendant retain the sole occupation, possession and/or control of the said properties which were acquired partly by her.
11. The Applicant urged that the said properties be shared proportionately according to their contribution and/or in such other manner as this Court may deem fit and just and/or the same be sold and the proceeds thereof shared proportionately. She contended that the Defendant's continued enjoyment of their matrimonial home despite having 2 other bungalows where he lives is prejudicial to her.

Replying Affidavit

12. The application is opposed by the Defendant/Respondent vide his Replying Affidavit sworn on 27/06/2024. He deposed that he and the Applicant began cohabiting in the year 1997 and that their marriage was dissolved vide a Decree Absolute dated 23/02/2022. That however, he and the Applicant had already separated on 29/05/2012 after he found her committing adultery on their matrimonial bed with one Mackline Sumatwa as per the Divorce Petition.
13. The Defendant maintained that during the subsistence of their marriage, the Plaintiff never contributed to the properties he owns. He contended that the property cited by the Plaintiff as 31/2 Acres comprised in LR NO. Moisbridge/Moisbridge/Block 7 (Lamaiywet) 9 (PART) being the matrimonial home does not exist as alleged by the Plaintiff, that Parcel of Land known as Land Reference Number Moisbridge/Moisbridge/Block 7 (Lamaiywet)/xxx (PART) measures 1 acre only and the Matrimonial House is erected on the said parcel and was solely purchased by him.
14. That when he bought Land Reference Number Moisbridge/Moisbridge/Block 7 (Lamaiywet)/xxx(PART) measuring 1 acre, he was working at the National Police Service and he bought the land parcel solely from the proceeds of his employment and that the Plaintiff did not make any contributions financially or otherwise and that he also used proceeds from his employment and supplemented the same by taking up loans to build and furnish the house that is erected on Land Reference Number Moisbridge/Moisbridge/Block 7(Lamaiywet)/xxx (PART) measuring 1 acre with no contributions from the Plaintiff and that the Plaintiff is not aware of the circumstances of the acquisition of the property as he moved her to the house after construction and furnishing of the same.
15. The Defendant further deposed that the other part of Land Reference Number Moisbridge/Moisbridge/Block 7(Lamaiywet)/xxx (PART) comprising of 1.1 Acres which is a different portion of the same land that was subsequently sold to him by the same vendor in two parts of 0.4 Acres as per the Agreement for sale provided by the Plaintiff and 0.7 Acres which was subsequently sold to him at a later date, that Land Reference Number Moisbridge/Moisbridge/Block 7(Lamaiywet)/xxx (PART) comprising of 1.1 Acres was also bought from the proceeds he received when he was working with the National Police Service and that the Plaintiff/Applicant has never made any contribution in purchasing the same, that land reference Number Moisbridge/Moisbridge/Block 7(Lamaiywet)/xxx (PART) comprising of 1.1 Acres is unoccupied as he practices maize farming on the parcel of land which is solely maintained by him.



16. The Defendant added that he also owns land Reference Number Moisbridge/Moisbridge/Block 13(PART) comprising of a half-acre in Moi's bridge which was bought on 17/06/2004 also from the proceeds of his employment at the National Police Service where he has planted blue gum trees on the whole land parcel which are maintained solely by him.
17. The Defendant further deposed that the property listed by the Plaintiff under Paragraph 6 (b), 6 (c) & 6 bb cited as Baringo/Kewamoi "A" /3xxxx comprising of 0.8 HA is the same property, that the property, Baringo/Kewamoi"A"/3xxxx comprising of 0.8 HA was purchased on 18/03/2015 when he and the Plaintiff had already separated and that at the time of the Purchase of Land Parcel Number Baringo/Kewamoi"A"/3xxxx comprising of 0.8 HA he was already married to his current wife Ms. Belvine Wanjiru Namu with whom he started cohabiting with in the year 2009 but formalized their marriage on 30/07/2015.
18. That his wife Belvine Wanjiru Namu witnessed the purchase of Land Parcel Number Baringo/Kewamoi"A"/3xxxx comprising of 0.8HA which means that him and the he and the Plaintiff were not together at the time hence there is no way she contributed to the acquisition of the same either directly or indirectly and that the alleged rental houses do not exist as the property is still under construction and his wife and him are planning to start a maize milling plant after completion.
19. The Defendant contended that parcel of Land measuring Approximately 2 Acres located in Sessianin Baringo North, Barwesa Division, Lawan Location, Keturwo Sub-location containing a bungalow house as cited by the Plaintiff was Purchased on 11/06/2015 and that the said land belongs to his current wife as he purchased it for that purpose. That the parcel of Land measuring Approximately 2 Acres located in Sessianin Baringo North, Barwesa Division, Lawan Location, Keturwo sub location containing a bungalow house as cited by the Plaintiff is also known as Land Parcel Number Baringo/Keturwo/ 299xx measuring 0.93Ha under paragraph 6 (ff) and that the bungalow erected on the Land Parcel is under construction.
20. The Defendant maintained that the alleged properties under Paragraph 6 (e) and 6(f) are unknown to him as he does not own such properties, that motor Vehicle registration Number KBV361 A Double Cabin was purchased on 6/08/2019 through a staff car loan by his current employer NCBA Bank Limited for a sum of Kshs.2,250,000.00 hence it was bought from his sole proceeds at a time when the Plaintiff and him had separated hence she cannot claim the same. That the 2 Freshian Cows, 2 Ayrshire cows, a Friesian bull and 5 dooper sheep cited by the Plaintiff under paragraph 6 (h) are unknown to him as he is not aware of any animals owned by him in his farm in Baringo, where he practices animal farming. He added that, they belong to the Plaintiff and they separated over 12 years ago.
21. The Defendant further deposed that land Parcel Number Baringo/Konoo/xxxx measuring 0.03 HA was purchased on 15/02/2019 at a time when the Plaintiff and him had already separated hence she did not contribute to the purchase of the same. That land Parcel Number Baringo/Keturwo/2xxx measuring 0.23HA was purchased on 24/08/2017 at a time when he and the Plaintiff had already separated hence she did not contribute and he does not have an Agreement for Sale with regard to that land Parcel.
22. The Defendant maintained that land Parcel Number Baringo/Keturwo/ 29xx measuring 1.53 Ha was Purchased on 2/04/2017 at a time when him and the Plaintiff had already separated hence she did not contribute and that land parcel Number Baringo/Keturwo/ 294xx measuring 0.96 Ha was purchased was purchased in the year 2018 at a time when him and the Plaintiff had already separated hence she did not contribute and that he does not have an Agreement for Sale with regard to that Land Parcel.



23. The Defendant further deposed that motor Vehicle Registration Number KCC 4xxx in the make of Isuzu Nqr66bus/coach was initially registered in the name of his wife Belvine Wanjiru Namu and Equity Bank Limited, that after Belvine Wanjiru Namu finished paying her loan with Equity Bank Limited she transferred Motor Vehicle Registration Number KCC 4xxx to his name hence he holds the same in trust, that the transport business belongs to him and his wife Belvine Wanjiru Namu and that on 29/05/2024 they made a decision to sell Motor Vehicle Number KCC 4xx x as it had depreciated and it did not make business sense to have the Motor Vehicle as part of their fleet.
24. The Defendant deposed that motor Vehicle Registration Number KCF 8xxx in the make of Isuzu Nqr a 33-seater bus was previously registered under Astrabell Limited a company where Belvine Wanjiru Namu and him were previously co-directors.
25. The Defendant added that motor Vehicle Registration Number KCF 8xxx was acquired using a loan with Family Bank Limited which was repaid using the joint efforts of his wife Belvine Wanjiru Namu and him and that after repaying the loan from Family Bank, they agreed to have the Motor Vehicle Registration Number KCF 8xxx registered in his name hence the same is held in trust in favor of his wife Belvine Wanjiru Namu. He maintained that motor Vehicle Registration Number KCA 7xxx in the make of Isuzu Bus /Coach was purchased from a loan from NIC Bank on 29/03/2018 now NCBA Bank hence the same solely belonged to him however he sold the Motor Vehicle to James Nyarumi Nyandwao.
26. The Defendant maintained that although the Plaintiff and him separated in the year 2012, he goes to the house in Moi's bridge from time to time to take care of his personal and farming businesses, that the Plaintiff and him have maintained a cordial relationship even after their separation in 2012 but they have never resumed cohabitation, that when he is visiting the Moi's bridge house, he has access to a different part of the house from the Plaintiff, that the Plaintiff primarily resides in the house alone while he resides in Embakasi, Nairobi County together with the children from their marriage. That on 27/05/2023, he went to the Moi's bridge house as he normally does at around 5:00 pm, that the Plaintiff on seeing him, left the house and did not return, that at around 8:00 pm, the area chief who was accompanied by police officers stormed into the compound of the house accusing him of demolishing the house, that at the time, he was seated outside the house hence, he allowed the police officers and the area chief to inspect the premises for purposes of confirming the Plaintiff's allegations and that they found that the Plaintiff had made false allegations against him as the house had not been demolished neither had anything around the house been vandalized.
27. The Defendant added that on 28/05/2023 the Plaintiff brother Haron Kibusia, a retired police officer, together with his son Kiprof Kipchumba came to the house to inquire what had happened between the Plaintiff and him because she had informed them that he had evicted her from the house, that he gave them a brief narration of how the Plaintiff had fled the house when he arrived on 27/05/2023 for reasons unknown to him and later falsely accused him of evicting her and demolishing the house, that they agreed that the Plaintiff would return to her maiden home and they would have a subsequent meeting for purposes of enquiring why she was accusing him falsely while she had left the house on her own volition. That the Plaintiff's brother informed him that he would convene the meeting wherein they would invite him and the elders from his side of the family and that he subsequently left Moi's bridge on 3/06/2023 with no communication from the Plaintiff's family on the date of the proposed meeting.
28. That further, the Plaintiff had not returned so he bought a padlock, locked the house and left, that he could not leave the house unlocked because he did not know the whereabouts of the Plaintiff, that on 6/06/2023, he was shocked to learn that the Plaintiff had returned to the house and was breaking



locks in the company of the area chief, that he was also shocked by the Plaintiff's actions in the events leading up to 3/06/2023 and he believes that her false allegations against him as evidenced above were calculated to persuade the local administration, law enforcers and the Court that he is a violent person for purposes of getting orders barring him from accessing the Moi's bridge house.

29. That he is not privy to the events that may have taken place after 3/06/2023 when he left Moi's bridge apart from the fact of the Plaintiff breaking the house locks in the company of the area chief on 6/06/2023 hence the allegations in paragraphs 6-10 are denied. He maintained that the Plaintiff cannot enjoy the house in Moi's bridge to his exclusion as parties to the marriage are equal during the subsistence of the marriage and during the dissolution of the same, that the Moi's bridge house and the Parcel of land wherein it is erected was bought by him and the Plaintiff did not contribute to the same and further that the Plaintiff is lying under oath as the events of 5/06/2023 did not happen as she alleges as he was not even in Moi's bridge on the said date.
30. The Defendant maintained that he has no intention of vandalizing any of the property at Moi's bridge with regard to the land where the matrimonial house is erected as the same was bought and was maintained using his money until when this suit was filed and the Plaintiff has never made any contribution either financially or otherwise.
31. The Defendant reiterated that the Plaintiff has never contributed or maintained any property under his name as he has demonstrated and hence she does not deserve any share. That the Plaintiff has continued to diminish the value of the matrimonial home as she has destroyed the doors and windows and also sold the household goods therein and it is therefore his prayer that this Court does make a declaration that he has 100% right to the matrimonial home so that he can take complete control of the same and that he does not hold any property in trust of the Plaintiff herein.
32. That the Plaintiff has had opportunities to develop herself as is evidenced by a loan she borrowed from SMEP DTM Limited wherein she listed the defendant's assets as security which included his Agri Chopper Machine, Motor Cycle Number KMCF9xxx, sofas, gas cooker and cows without his consent and listed Andrew Kiprono Maiyo as her husband whilst they were still married. That she failed to repay the money she had borrowed but instead wasted the same resulting in him repaying the loan. According to the Defendant the Plaintiff is a very wasteful person who has continuously diminished the value of the matrimonial home and sold the household items.
33. The Defendant maintained that he has no intention of disposing his own properties that he has worked hard to acquire during his various employment with the National Police Service, Barclays Bank as then was and NIC Bank now NCBA and that since his separation from the Plaintiff, he is the parent with the actual custody of the children of the marriage two of whom are now adults and so there is no way he would make a decision that is to their detriment. That the Plaintiff has only demonstrated that he owns the properties listed in her Supporting Affidavit and Originating Summons but has failed to demonstrate her contribution to the acquisition of the same either directly and/or indirectly.
34. In the end, the Defendant urged the Court not grant a share of the properties owned by him and the others owned together with his current wife Belvine Wanjiru Namu as that will be allowing the Plaintiff to reap where she did not sow.
35. Subsequently, the matter proceeded by way of viva voce evidence. The plaintiff testified by herself and called 4 witnesses and the defendant testified by himself and called no witnesses. A summary of their evidence is as hereunder.



The Plaintiff's Evidence

36. The Plaintiff PW1 in her testimony stated that she is a housewife and that she does not work. She then adopted the Supporting Affidavit sworn on 25/4/2024 as her evidence in chief and the exhibits listed on her list of documents as amended dated 31/5/2024.
37. She testified that she contributed a lot to the acquisition of the property and so she also needs to get a share. She stated that when they got married, they had children and they bought the land and established the matrimonial home. She testified that she stayed at home, cultivated the land and sell the produce to get money to further develop the land. She testified that she tended to and watered the trees. It was her testimony that she is the one who planted them and watered them and tended them and even took care of the cattle some of which would be sold to pay school fees. She stated that she had to leave school as the defendant was at the University and that she did casual work as she tended to the farm and also took care of the children and that she would do the digging by hand and was not using a tractor, doing manual labour and using 'chama' proceeds to assist the defendant. She told the Court that he was already a policeman at the college and that she joined him in Nairobi when they got the farm at Baringo and at Moi's Bridge. She stated that at Baringo they built a toilet and left it then concentrated on the Moi's Bridge farm. She told the Court that she left Nairobi and came to Moi's Bridge and handled the children, the workers, the ongoing construction, the farm and everything to do with the development of the farm as he wandered around in Nairobi coming only once in a while and then going back.
38. In cross-examination PW1, stated that she has nothing to show when she got married to the defendant. She testified that she was under age and in form 3. She stated that she did not contribute monetarily to the development of the matrimonial properties at Moi's Bridge. She stated that their homestead is on 3 ½ Acres and that the trees are planted on half an Acre. She told the Court that the sale agreement the purchase was for one acre and that the seller is James Sirma and that the same is dated 4/3/2004. She further testified that the 2nd Sale Agreement is dated 29/4/2007 and that the seller is Sirma and the buyer is Noah and that the acreage is 0.4 Ha. She confirmed that that the Defendant Sale Agreement is dated 26/11/2007 and that the seller is Sirma and the buyer is Noah and that the same is 2.7 Acres . She stated that she lives on the farm and that the homestead is on one acre.
39. She clarified that the parcels are separated but it is one person who sold the entire parcel and that she cultivates the rest. She told the Court that she was not forced to marry the respondent. She confirmed that she has 4 children. The eldest is 24 years born in 1997, the 2nd was born in 2003, then the 3rd born in 2007 and the last one born in 2011. She told the Court that they did mediation in regard to the children and they were given to the defendant. She confirmed that she lives with their child George only and the rest of the children come to live with her during the holidays.
40. She reiterated that she is the one who developed and took care of the house, gave birth to and took care of the children. She stated that the Defendant's exhibit shows the door to the house at Moi's Bridge and that added that it is the defendant who damaged it. She stated that she had a salon but it collapsed. She told the Court that Noah supported her and set it up but she contributed to it too. In regard to the Defendant's documents No. 60, She stated that she took the loan with household goods as security and that the goods were attached but they were brought back when the loan was paid and that she is the one who paid that loan with the SMEP. She conceded that the receipt of Co-operative Bank shows that the defendant paid and stated that the loan people went back and she paid again.
41. She testified that they lived together since 2023 when he removed her from the house and that there was a Divorce Cause in the lower Court but she did not know about the Divorce Cause since it is



- the defendant who filed it and that it is when he evicted her from the house when she was told he had divorced her and so she filed this Matrimonial Cause. She stated that she does not know if the defendant has another wife for reasons that he still used to go to their home at Moi's Bridge until when he evicted her. She testified that she does not know Kiprop. She denied that they were estranged in 2012, as Defendant still used to go home. She stated that in 2012, they just disagreed and she went home and that Noah went for her and she went back.
42. She told Court that Kipchumba is her brother. She stated that they lived with Noah at Moi's Bridge and that even the property at Baringo he bought when he was her husband and she was his wife so even if she did not contribute to their purchase financially, she is entitled to a share of those properties and including the cars that she has listed for reasons that even if she does not know how he purchased them they were purchased when they were together.
43. PW2 was Barnabas Kimurgen Kiplagat Kemboi. He dopted his Witness statement dated on 15/4/2024 as his evidence in chief. He told the Court that him and the couple have been neighbours since 2004. He stated that he can testify on the loan because his wife too was a member of that SMEP Group and that if one asked for a loan, another member of the group would act as their guarantor and so all of the members took loans and they paid back though there was a time that the plaintiff had problems paying but she eventually paid. He told the Court that as per the records it is the plaintiff who paid back the loan. He stated that he also knows that she had salon but it did not last because she had a child to take care of as well as tend to the cows and so managing and supervising it must have been a challenge because of what she had in her hands and so she had employed a lady in the salon. He added that Moi's Bridge is a one street town and the salon was at more in the back. He told the Court that PW1 and the Defendant came and they build on the land and that he was their immediate neighbour and he watched them grow. He reiterated that Joan is the one who took care of the farm, cultivated the land, reared the cows and chicken, took care of the children and all this is because the husband was working away from home and was not staying there but would come and stay for some 2-3 days and then go back.
44. In cross-examination PW2 stated that he met them before they bought his brother's farm and planted blue gum trees. He then produced the agreement of the sale of the land and added that he is the one who took the minutes of the meeting. He stated that present at the meeting were: Selina Koech, his mother, Sila Rotich, his uncle, William Cheruiyot, their neighbour and Reuben Cheruiyot, a family member and a friend of the defendant. He told the Court that the agreement is between his father, Wilson Koech and Noah the defendant. He added that the agreement indicated the names of all those that were present. He stated that the plaintiff Joan was also present and further confirmed that it is the defendant Noah who gave out Kshs. 90,000/= to his brother Jonah Ruto. He stated that he was a member of SMEP but he left after his wife came in as a member.
45. PW4 was Charles Munyengwo Komen, he adopted his Witness statement dated on 15/04/2024 as his evidence in chief. He stated that Joan is his cousin and that she got married at the stage of "Miaka kumi na kitu" and that she was in school then in Form 2 and the defendant Noah was in 2nd or 3rd year at the University. He stated that they were shocked at the divorce because Noah impregnated Joan as a young girl and left her at home to cultivate and work the land as Noah comes and sells the produce. He told the Court that Noah finally got a job as a policeman then he bought land, fenced, built a toilet as Joan remained at home as his manager. He stated that they were his neighbours then and that after a while both of them left for Nairobi. He testified that he later heard that they moved to Moi's Bridge but about that he did not know. It was his testimony that it is unknown what Noah has done to Joan. He told the Court that he removed her from school, she did not continue with her education yet he continued with his. He told the Court that PW1 takes care of the Defendant and his home and then when he became prosperous and successful he kicked her out.



46. In cross-examination PW3 conceded that he does not have a document to prove that Joan was married as a minor but added that she was young and in Form II and she was definitely below 20 years. He reiterated that she was “miaka kumi na kitu” but was not an adult but a child. He confirmed that she was not force. He also confirmed that he does not know the number of land where the Defendant intended to build but he never did. He stated that he does not know the reason for their divorce.
47. PW4 was Mary Chepsergon, she adopted her Witness statement dated on 15/04/2024 as her evidence in chief. She stated that about when the Defendant got married she does not know but she just heard that her husband got her from school. She told the Court that she got to know them as a couple when they moved to Moi’s Bridge in the year 2004. She testified that on the property, they moved to Moi’s Bridge as a family and Noah was working and Joan was staying at home taking care of the home, cultivating the farm, herding and taking care of the cows, sheep and chicken which Noah would come and sell for his benefit and for the benefit of his family and children which traditionally is not wrong but for all the work that Joan did she must be appreciated and be compensated appropriately. She stated that they were her neighbours and she witnessed all these. In cross-examination, PW4 stated that she was their neighbour at Moi’s Bridge. She confirmed that it is Noah who bought the land piece by piece.
48. PW5 was Harun Kipchumba Kibusia. He adopted his Witness statement dated 15/04/2024 as his evidence in chief. He testified that he is Joan’s elder brother. He told the Court that in 1997, he does not know how old she was but she was in Form III and in term one when she got pregnant and got married to Noah Cheptumo. He asked that they be given equal shares of the matrimonial property. He told the Court that his father restrained him from taking legal action against Noah when he impregnated his sister and that he was friend to Noah’s father. He told the Court that Noah was at Nairobi, University and his sister was at home. He stated that he working in Nairobi and they used to meet.
49. He told the Court that later in 2004, together they left Baringo and went to live in Moi’s Bridge. He testified that he, one time went to visit them and found they had developed their land and done a marvelous job, that they kept cattle and sheep and they had planted eucalyptus and grevillea trees. He testified that during the next visit Noah took him to sleep at a home and that the next morning he went to their home and he was not there. He stated that he was told that the Defendant had transported the cattle to his sister’s place at Mimoi in Elgeyo Marakwet. He testified that they were still waiting to harmonize their marriage and so he was shocked to hear Noah had filed for divorce for reasons he did not know. On the allegation that his sister was wasteful and lazy and had destroyed their matrimonial property, he disagreed because they had built a big brick house. He testified that Noah took him round and showed him the eucalyptus trees and grevillea trees as well as the maize that she had cultivated and the animals that she had reared and that he told him that she is the one who did this work.
50. In cross-examination PW5 stated that the marriage was not forced. He stated that he lives in Baringo and Joan lives in Moi’s Bridge. He told the Court that distance is huge but he visited them and saw the developments that they had and it is his sister who told him what she did as part of the development of land.
51. The Defendant testified as DW1. He stated that he is an employee of NCBA Bank where he works as Head of Security. He adopted his witness statement dated 5/07/2024 as his evidence in chief and also produced a list of documents dated 4/07/2021 and a further document filed on 11/07/2024 which documents he relied on as the exhibits in support of his case.
52. He testified that the Plaintiff and him got married in the year 1997. He stated that he was a student at the University of Nairobi and that he was 23 years old and that the Plaintiff was around the same age because they are age mates. He further testified that they separated in the year 2012 and that the



reason was because he travelled home one day, arrived at midnight and found a stranger in his house in his bedroom and because that was an extremely painful experience, they never resolved the matter.

53. He told the Court that before the separation, he had 2 wives, the Plaintiff and another. He urged the Court to look at the pleadings and recognize that all the properties therein listed are his properties bought with his savings from the Kenya Police which he joined when he joined the Nation Police service in the year 2011. He testified that he took loans from the SACCO and bought those properties as particularized in the witness statements He stated that he moved to Moi's Bridge in the year 2007 and that is when the Plaintiff also moved to Moi's Bridge. He told the Court that when he brought in his 2nd wife in the year 2006 is when he started buying the properties in Baringo and so all my properties purchased during that period in Baringo were for his 2nd wife who is the OCS Githunguri Police Station and she made a decision to reside in their rural home in Baringo.
54. He stated that these properties are the ones listed at paragraph 14. That on the property listed at paragraph vi), the agreement was signed by his wife Belvin Namu. That the property listed at paragraph x) is the house where they reside. That the property listed at paragraph xv) is a plot that he bought from one Daniel Kendagor who relocated to Sothern Sudan and that he is even yet to see the plot. That the property listed at paragraph xvi) is a small plot that he bought from one Thomas Chepsaigot during his marriage with Belvin and that the properties listed at paragraphs xvii) and xviii) are the same pieces of land that he bought from one Joseph Kulei and that they were one block divided into two. He told the Court that all these properties are in Baringo.
55. Regarding the properties in Moi's Bridge, he told the Court that because Baringo County is very dry, upon his employment his first thought was to move to a good place and he bought a vacant piece of land at Moi's Bridge and developed it. That he put up a house, a store, a toilet and gate and then in the year 2007 he took Joan there. He stated that it was not in the year 2004 as has been stated severally before the Court. According, to DW1 he cannot arrive at the conclusion that Joan was a supportive wife for various reasons.
56. That he put up a salon in Moi's Bridge to support her and it collapsed on 20/5/2012 when the events of 2012 prevailed and all the work equipment and machines in that salon have not been returned to him. That there was a loan that the Plaintiff took from a microfinance institution and she defaulted in payment and as a result auctioneers took away his properties that is 2 cows, a motorbike, a sheep, machines and other small items that he could not recall. That he filed a suit at the Court in Kitale and he was able to win that case but unfortunately when he took the cows to his rural home in Barwesa Baringo, they all died.
57. That further, he sustained injuries at the hands of the plaintiff on the night of 30/05/2012 when he arrived in my house on the fateful night and found the plaintiff on their matrimonial bed with a stranger who proceeded to stab him on the head and hand with a knife and he was treated at Eldoret Hospital. According to DW1, considering all these, he would say that the support he got from the Plaintiff was painful support. He stated that the plaintiff and him have four children and that he had all the children up to the 4th child until the last one named GK was taken away from him by the mother and that he is now 15 years old.
58. In cross-examination, DW1 stated that he took the children to live with him in Nairobi on a date he could not remember but confirmed that they used to live at Moi's Bridge before then. He stated that 2 are adults, the 3rd one turned 18 years 2 weeks ago and that they are all in Boarding school. He told the Court that there was a Children's' case between the Plaintiff and him and it ended in the year 2023 when he assumed responsibility of the children by consent following a mediation. He told the Court that they got the divorce in the year 2020.



59. He confirmed that when they got married he had no properties. He stated that his financial position by 2020 had changed but he would not say significantly because he was now receiving a salary. He stated that when met Joan she was in High School and confirmed that she got pregnant when she was in Form 3 but denied that that it is what caused her to drop out of school. He told the Court that their 1st child was born in the year 1997, the 2nd child was born in in the year 2003, his 3rd third born he only knows is now 18, the year old and the year of birth was in 2008 and the last child was born in the year 2011. He confirmed that from the time that they were born until the time when he took them, it is Joan who was staying with the children.
60. He stated that the plaintiff was not doing any agricultural work at home and added that he is the one who was doing the farming 100%. He confirmed that he lives in Nairobi where he works but stated that he used to come Moi's Bridge every weekend. He conceded that he does not have any receipts of purchase of agricultural inputs to work the farm. He told the Court that he bought the Moi's Bridge land on 4/03/2004 at Kshs. 180,000/=, that he applied for the loan to purchase it in December 2003 and he got Kshs. 214,000/=. He stated that he constructed the house over time but conceded that he has no documents to show and he was not sure of the date. He told the Court that Joan still inhabits the land for reasons that he has not been there for a while. He confirmed that he lived in that house with Joan and that it was their matrimonial home.
61. He conceded that apart from the Salon support, he has not produced any evidence of any other support. He stated that the marriage between him and Bevaline was legalized in 2015. He stated that he met and started cohabiting with her in 2006 but his statement says 2008 and so he will go by what is in the statement and that is 2008. He told the Court that they owned cows up to 2012 when the auctioneers came and took away those cows. He reiterated that he went to Court, he won and got back the cows, took them to Baringo and they died. He confirmed that he did not indicate the issue of the case in his statement and conceded that he only said there that he paid off the loan but he did not produce any receipts to that effect to support that averment. He stated that he only produced a receipt of payment of legal fees to his Advocate Barongo who handled the Court case on his behalf. Regarding the genesis of the loan, he told the Court he could not tell and he did not have the exact date but it was in May/June 2023 that the Plaintiff destroyed the matrimonial home because of her wastefulness as he has alleged.
62. In response to an allegation by the Plaintiff that he is the one who destroyed the home, he told the Court that in Court documents, he stated that when the police visited the home, they found that the house had not been demolished and neither had anything around the house been vandalized.

Submissions

63. Counsel thereafter filed submissions on behalf of the parties and the Plaintiff filed their submissions dated 25/08/2025 whereas Defendant filed submissions dated 12/09/2025.

The Plaintiff's Submissions

64. Counsel for the Plaintiff began by submitting that the question of what constitutes matrimonial property must first be dispensed with before this Honorable Court can proceed to determine what percentage of it the parties are entitled to, or any other consequential reliefs. Counsel cited Section 6 of the *Matrimonial Property Act*, on the definition of matrimonial property and submitted that from the said Section it emerges that the defining factor is whether the property in question was acquired during the subsistence of the marriage. Counsel argued that once it is established that a marriage existed and was operational, all property acquired in that period, whether registered in the name of one spouse



- or both, falls under the statutory bracket of matrimonial property. Counsel added that this test was applied by the Court in *AQY v OJM* (Matrimonial Cause E008 of 2023) [2024] KEHC 8547 (KLR).
65. Counsel urged that the immediate question is to establish the timeframe within which the marriage was in operation, and whether the properties now in dispute were acquired within that period. Counsel maintained that once that threshold is satisfied, the properties will, without doubt, fall within the definition of matrimonial property as envisaged under Section 6 of the *Matrimonial Property Act*.
66. Counsel submitted that in the present case, the Plaintiff's position, from the evidence tendered in Court, is that the marriage commenced in 1997 under Kalenjin customary law, following which the parties cohabited as husband and wife for a continuous period of twenty-three (23) years until the same was dissolved by a decree of divorce in Eldoret Chief Magistrate's Court Divorce Cause No. 47 of 2020. Counsel argued that this position is strengthened by the Respondent/Defendant's averments in cross examination where he expressly stated that they were married from 1997 to 2020 and further stated that he entered the marriage when he had no properties and that by the time he walked out of the marriage, his financial standing had greatly changed. Counsel urged that it is therefore within this timeframe, 1997 to 2020, that the Court ought to interrogate the acquisition of the properties in dispute, for purposes of determining whether they qualify as matrimonial property. Counsel relied in the decision in *PNN v ZWN* [2017] eKLR where the Court reaffirmed the position that the defining factor in determining whether property is matrimonial is not whose name appears on the title but rather when and how the property was acquired.
67. Counsel contended that legally speaking, whether it was registered in the name of the respondent alone as is the case herein, that property automatically qualifies as a matrimonial property pursuant to Section 6(1)(c) of the Act. Counsel observed that as to when the properties were acquired, it is worth noting that the alleged separation in 2012 did not in any way affect the legal status of the marriage between the Plaintiff and the Defendant. Counsel maintained that in law, the marriage was only concluded by the decree nisi issued following the divorce petition initiated by the Respondent. Counsel added that position was reiterated by the Court of Appeal in *MvR M* [1985] KECA 77 (KLR).
68. Counsel urged that the relevant inquiry is whether the properties in question were acquired within the marriage window of 1997 to 2020. Counsel submitted that all the properties listed in the Amended Originating Summons fall within this timeline and therefore constitute matrimonial property.
69. Counsel submitted that having established that the properties listed in the Amended Originating Summons fall within the definition of matrimonial property, the next question is whether the Plaintiff is entitled to a share thereof. It is the Plaintiff's humble submission that she is indeed entitled, by virtue of both *the Constitution* and statute, as well as the jurisprudence of our superior Courts. Counsel urged that Article 45(3) of *the Constitution* of Kenya, 2010 underscores the equal standing of both spouses in relation to the property acquired during their union.
70. Counsel added that the jurisprudence of our superior Courts has affirmed that the provisions of Article 45(3) of *the Constitution* and the *Matrimonial Property Act*, 2013 (MPA) were designed to protect the principle of equality between spouses, both during the subsistence of marriage and upon its dissolution. In *CWM v JPM* (2017) KECA 2011KLR, the Court of Appeal underscored that these provisions were enacted to safeguard the equality of spouses in marriage and at dissolution, thereby ensuring that neither party is rendered destitute or unfairly disadvantaged due to the breakdown of the union. Counsel observed that it tied the aspect of equality to the Article 28 on the principle of human dignity.
71. Counsel added that this position was adopted by Kiage, JA in *PNN v ZWN* (Supra). Counsel pointed out that in this regard, Courts have emphasized that marriage is a partnership where neither spouse



- should be disadvantaged merely by the absence of direct financial contribution. Counsel submitted that under Section 14 of the [Matrimonial Property Act](#), there exists a rebuttable presumption that where matrimonial property is acquired in the name of one spouse, that property is held in trust for the other spouse. Counsel observed that this presumption reflects the equitable principle that both parties to a marriage are presumed to have contributed to the acquisition of matrimonial property, unless the contrary is proven.
72. With regard to the question of the ownership of the matrimonial property, Counsel cited Section 7 of the [Matrimonial Property Act](#). Counsel observed that notably contribution under the Act is not confined to direct monetary input. Counsel submitted that Section 2 of the [Matrimonial Property Act](#), 2013, expressly defines contribution to include both monetary and non-monetary contribution, including domestic work, child care, management of the matrimonial home, farm work, and companionship. Counsel urged that although during the subsistence of their marriage the Plaintiff had no source of income having dropped out of Form 3 to get marriage to the Defendant, the Plaintiff has been a diligent mother and wife, taking care of their children, carrying out house chores and the management of their matrimonial home. Counsel submitted that the Court should be guided by the definition of 'matrimonial home' provided under Section 2 of the [Matrimonial Property Act](#) 2013.
73. Counsel submitted that since contribution is an issue of fact, it calls for evidence. Counsel urged that the evidence tendered in Court speaks to the fact that the Plaintiff singlehandedly managed the matrimonial property and taking care for over 10 years when the Defendant was away working. Counsel pointed out that the 2nd Plaintiff's witness, Barnabas Kiplagat Kimurgor Kemboi, in his testimony stated that he used to see the Applicant/Plaintiff taking care of "kuku", "akitafuta tinga ya kulima" which translates to; he used to see her taking care of the poultry and looking for a tractor for the farming. Counsel urged that in the same vein, the 3rd Plaintiff's witness, Charles Komen (Munyengwo), who stayed with the parties in Kibuiwonin Village in Baringo stated in examination-in-chief that Joan was managing Noah's property, that the 4th Plaintiff's witness, Mary Chepsergon, stated that she saw Joan doing farming and managing the property and that the Respondent/Defendant admitted in cross-examination that the Plaintiff was the one who stayed with the children from birth until 2023 when he took them when he was working, an admission that he was away from home working and that he did not carry the children along with him can only point to the immense contribution of the Applicant/Plaintiff albeit non-monetary.
74. Counsel urged that the Plaintiff's entitlement is reinforced by Section 9 of the [Matrimonial Property Act](#), 2013, which recognizes that where a spouse acquires an interest in property that is not strictly matrimonial property by contributing to its improvement, that spouse is entitled to a beneficial interest in the property commensurate with the contribution made. Counsel added that on his part, Harun Kipchumba Kibusia quoted the words of Noah Cheptumo as he was giving him a tour in their home saying, "this is what your sister has been doing". Counsel contended that the Respondent/Defendant was referring to the developments on the land, the livestock as well as the eucalyptus and grevilia trees which had been planted and maintained by the Applicant/Respondent.
75. Counsel thus urged that in light of the constitutional guarantee of equality, the statutory presumption of trust, and the broad recognition of non-monetary contribution, she is entitled to a share of the matrimonial property listed in these proceedings. Counsel also urged the Court to order that the same be equitably divided between the parties.
76. Counsel submitted that having established that the listed properties are matrimonial property within the meaning of section 6 of the [Matrimonial Property Act](#), 2013, and that the Plaintiff is entitled to a share, the next question for determination by this honorable Court is the extent of that share. Counsel



maintained that they are alive to the fact that each case must be determined based on its own peculiar circumstances. He relied on the case of *TKM v SMW* [2020] eKLR.

77. Counsel further submitted that the governing principle in division of matrimonial property is contribution. Counsel observed that under Section 7 of the *Matrimonial Property Act*, apportionment follows each spouse's contribution, monetary or non-monetary. Counsel further observed that its first definitive pronouncement on this question, the Supreme Court in *JOO v MBO; Federation of Women Lawyers (FIDA Kenya) & another (Amicus Curiae) (Petition 11 of 2020)* [2023] KESC 4(KLR) held that Article 45(3) guarantees equality of rights, not an automatic 50:50 split; shares are assessed case-by-case on proven contribution, including indirect/non-monetary inputs such as childcare, management of the home, and easing the other spouse's financial burden. Counsel added that the Court *AQY v OJM (Matrimonial Cause E008 of 2023)* [2024] KEHC8547(KLR) emphasized the greater awareness of the value of non-financial contributions of a spouse to the welfare of the family. Further, Counsel submitted that in appropriate facts, this assessment may still justify an equal division as was stated in *UMM vs. IMM* [2014] eKLR.
78. Counsel observed that in *HSO v DOO (Matrimonial Cause E001 of 2024)* [2024] KEHC 15590 (KLR), the parties had contracted a customary marriage, started cohabiting as husband and wife and were blessed with three children. During the subsistence of their marriage, they jointly acquired properties which were registered under the husband's name. Counsel submitted that the Applicant's case was that the properties acquired during the subsistence of the marriage was part of matrimonial property and further that the Court should order just and equitable distribution of the property which they acquired together during the course of their marriage so that she can use her share for the benefit and upkeep of their minor child currently in her custody. Counsel observed that it was her contention that she contributed in the construction of the properties through her time and supervision of the project as the respondent was busy working in a bank in Kisii, however, the respondent averred that the properties in the originating summons were solely acquired by himself without any contribution from the spouse and therefore could not be termed as matrimonial property.
79. Counsel observed that the issue for determination by the Court was whether the Applicant proved her claim against the respondent for a share in the properties named and whether the said properties are matrimonial property as defined under the law. Counsel added that on whether the said properties formed part of matrimonial property, the Court was guided by section of the *Matrimonial Property Act*, No. 49 of 2019 in finding the properties to be matrimonial properties, that on the division of the said properties, the Court was of the opinion that;
- “The position is that the distribution depends on the spouses' individual contributions in the acquisition of the properties. Contribution may be direct monetary contribution or otherwise.”
80. According to Counsel the Court examined the evidence before it using the lens of Article 45(3) as interpreted by the Apex Court and the Court of Appeal in the case of *JOO v MBO* and the case of *PNN v ZWN* case respectfully.
81. Counsel urged that being persuaded by the weight of evidence that the parties to the case lived together in their matrimonial home, and that when the respondent was away in Kisii, the Applicant supervised the construction of the rental apartments, their subsequent management and she took care of their 3 children, the contribution of the Applicant was qualified albeit non-monetary.
82. Counsel urged that the evidence before the Court shows a 23-year union in which the Plaintiff primarily shouldered homemaking and childcare, and for over a decade single-handedly managed



the home and properties while the Defendant pursued his career. Counsel maintained that non-monetary inputs enabled acquisition, development, and preservation of the estate-precisely the sort of indirect contribution the Supreme Court recognizes as weighty in apportionment. On these facts, and consistent with Section 7, the Plaintiff's contribution is substantial and, in aggregate, commensurate with the Defendant's financial role. Counsel urged that this Court should find that she has established a beneficial interest warranting an equal or, in the alternative, a substantial-share of the matrimonial property, assessed against the totality of her non-monetary contribution during the marriage.

83. Counsel further submitted that Plaintiff has already demonstrated that the suit properties fall within the definition of matrimonial property under Section 6 of the *Matrimonial Property Act*, 2013, and that she is entitled to a beneficial share therein by virtue of her contributions during the subsistence of the marriage albeit non-monetary. Counsel maintained that having established this right, the next question for your determination is whether this Court should permanently restrain the Defendant from interfering with the Plaintiff's quiet possession and enjoyment of the share awarded to her.
84. Counsel urged that it would be an exercise in futility for the Court to declare a right and not to protect it. Counsel relied on the case of *MO v AOW* [2017] KEHC 4944 (KLR). Counsel submitted that since Court orders are not made in vain, it would be in the interest of justice to restrain the Defendant from interfering with the Plaintiff's quiet possession and enjoyment of the share awarded to her by way of a permanent injunction. Counsel added that the order sought herein is one of permanent injunction, granted upon the final determination of rights and that this is distinct from an interlocutory injunction, which is governed by the principles in *Giella v Cassman Brown* [1973] EA 358 and is concerned with preservation of the status quo pending trial. Counsel maintained that in this case, having demonstrated her beneficial entitlement to the matrimonial property, the Plaintiff is properly entitled to the protection of a permanent injunction to secure her quiet enjoyment thereof.
85. In regard to Costs, Counsel submitted that awarding of costs by a Court is discretionary. Counsel observed that the general rule as provided under Section 27 of the *Civil Procedure Act* is that costs follow the event. Counsel urged that the Plaintiff having succeeded in establishing her entitlement to a share of the matrimonial property, it is in the interest of justice to be granted the costs of this suit. He cited locus classicus on the question of costs, *Jasbir Singh Rai & 3 Others v Tarlochan Singh Rai & 4Others* [2014] eKLR.

The Defendant's Submissions

86. Counsel for the Defendant equally began by citing Section 6 of the *Matrimonial Property Act* on the definition of what constitutes matrimonial property. Counsel added that in light of the foregoing provision of the law, all the properties listed by the Plaintiff are matrimonial properties having been acquired during the subsistence of the Parties' marriage between 1997 and February 2022 when their marriage was dissolved.
87. However, Counsel implored upon the court to take notice of the following; that parcel of land measuring approximately 6 Acres located in Katibei area of Cheboryo does not exist, the 2 Friesian Cows, 2 Ayrshire cows and 5 doper sheep are not known to the Defendant, parcel of Land measuring approximately 6 Acres located in Sessianin Baringo North, Barwesa Division, Lawan Location, Keturwo sub location is not known to the Defendant, the land in Moisbridge/Moisbridge /Block 7 is cumulatively 2.1 Acres and not 3 1/2 Acres as averred by the Plaintiff, the land known as Moisbridge/Moisbridge/Block 7 was sold to the Defendant in part and the Title Deed is still in the name of James Sirma,



88. That further, the Matrimonial house is erected on 1 acre which is separate from the 1.1 Acre that is used for farming by the Defendant, that Moisbridge/Moisbridge/Block 13 (Part) comprises 1/2 an acre and is separate from Block 7 and that the Defendant has planted a forest on Moisbridge/Moisbridge / Block 13(Part) in the year 2004 when he purchased the parcel of land and there is no activity on the parcel of land and also the Title Deed of the Land Parcel is still in the name of Wilson Koech.
89. Counsel cited Section 8 of the Matrimonial Act and submitted that the Defendant began cohabiting with his current wife Ms. Belvine Wanjiru Namu in the year 2009 as evidenced by the Birth of their first child Kepha Kisosop on 18/03/2009 as evidenced by the Certificate of Birth produced as Exhibit No.5 and that their marriage was registered on 30/07/2015 as evidenced by the Certificate of Marriage produced as Exhibit No.4.
90. Counsel then submitted that the following properties are held by the Defendant in trust because his second wife made tremendous contribution to their acquisition and that is motor vehicle Registration Number KCC 4xxx in the make of ISUZU NQR66BUS/COACH which as aforementioned was previously registered in the name of his wife Belvine Wanjiru Namu and Equity Bank Limited and was later transferred to the Defendant. However, Counsel added that the said Motor Vehicle has already been sold. That Motor Vehicle registration number KCF 8xxx in the make of ISUZU NQR a 33 seater bus was previously registered under Asrabel Limited Company where the Defendant and his current wife Ms. Belvine Wanjiru Namu were co-directors and it was acquired using a loan from Family Bank Limited which was repaid by the Defendant and Ms. Belvine Namu and that after the loan was repaid, the Motor Vehicle was transferred in the Defendant's name hence he holds the same in trust of the Ms. Belvine Wanjiru Namu.
91. That land Parcel Number Baringo/Keturwo/ 299xx where the Defendant has erected a bungalow is the matrimonial home of Ms. Belvine Wanjiru Namu and that land Parcel Number Baringo/Kewamoi"A"/3xxxx was purchased by the Defendant in the presence of his current wife Ms. Belvine Wanjiru Namu as evidenced by the Agreement for Sale produced as Exhibit Number 20 where she was one of the witnesses hence his current wife was the Defendant's companion at the time and not the Plaintiff. That the Defendant also averred during the hearing that Land Parcels Numbers Baringo/Konoo/xxxx which was purchased on 15/02/2019, Baringo/Keturwo/2xxx which was purchased on 24/08/2017, Baringo/Keturwo/ 294xx which was purchased on 2/04/2017, Baringo/Keturwo/ 294xx which was purchased in the year 2018 are all held in trust of his current wife because he was living with her at the time of the purchase of the properties hence the Plaintiff has no interest in the land parcels.
92. Counsel pointed out that the Plaintiff also during the hearing confirmed that she did not know how the Baringo Properties and Motor Vehicles were purchased. Counsel submitted that the above properties should not be considered when distributing property between the parties herein because they are held by the Defendant on behalf of his current wife in light of Section 8 of the *Matrimonial Property Act*.
93. Counsel submitted that the Plaintiff is not entitled to the aforementioned properties, and further submitted that the Plaintiff is equally not entitled to the following properties save for the household goods that the Defendant is not contesting for reasons stated below; Moisbridge/Moisbridge / Block 7 (Lamaiywet] /9 (Part) 1 acre with the Matrimonial House, House Hold goods in Moisbridge/Moisbridge/Block 7 (Lamaiywet)/xxx(Par) 1 acre with the Matrimonial House, Moisbridge/Moisbridge/Block 7 (Lamiywet) 9 (Part) 1.1 Acres used for farming, Moisbridge/Moisbridge/ Block 13 (Part) 1/2 acre with the blue gum trees forest, motor Vehicle Registration Number KBV 361 A Double Cabin and Motor Vehicle Registration Number KCA 7xxx in the make of Isuzu Bus/Coach.
94. Counsel argued that during the hearing the Plaintiff confirmed that she has not made any monetary contribution to any of the properties listed above so her contribution if any is in the nature of



- indirect contribution. Counsel submitted that Section 2 of the *Matrimonial Property Act* provides the parameters of indirect contribution as follows: domestic work and management of matrimonial home, child care, compensation and management of family business or property and farm work.
95. With regard to Moisbridge/Moisbridge / Block 7 (Lamaiywet) /9(Part) 1 acre with the Matrimonial House, Counsel submitted that the same was purchased on 4/02/2004 and construction began in the year 2007 and continued until the year 2009. Counsel added that according to the Defendant's evidence, the Plaintiff moved to Moisbridge in the year 2007 and has never made any improvements on the matrimonial house but has instead diminished the value of the house.
96. Counsel submitted that it is the Defendant's contention that since he bought the Land and met all the construction costs, the Plaintiff has no share in the matrimonial house because she has not added any value to the same. Counsel added that the Defendant resides with 3 of the 4 children of the marriage hence he is deserving of the house since the Plaintiff has failed to prove any indirect contribution according to section 2 of the *Matrimonial Property Act*. On the other hand, Counsel observed that the Plaintiff's evidence was that she moved to Moisbridge in the year 2004 however, there is no evidence that the house had been constructed as the Defendant bought the land and from the Defendant's evidence there was no proof that there was a house until the year 2007 hence the Plaintiff's evidence was mere falsehood which amounts to perjury. With regard to the household goods in Moisbridge/Moisbridge / Block 7(Lamaiywet) /9 (Part) 1 acre with the Matrimonial House, Counsel submitted that the Defendant has no objection to the Plaintiff being granted the same.
97. With regard to Moisbridge/Moisbridge/Block 7 (Lamiywet) 9 (Part) 1.1 Acres used for farming, Counsel submitted that the same was purchased by the Defendant in the month of January in year 2007 where he initially purchased 0.4 Acres and he subsequently bought 0.7 Acres in the year 2008. Counsel added that the land is used for farming and the Defendant contends that he does the farming by himself and the Plaintiff has never overseen the farming on the land parcel hence she has not made any contribution.
98. With regard to Moisbridge/Moisbridge/ Block 13 (Part) 3/2 acre with the blue gum trees forest, Counsel submitted that the Defendant contends that he planted the blue gum trees in the year 2004 immediately after purchasing the same. Counsel argued that the Plaintiff at the time had not relocated to Moisbridge hence it is not possible that she planted the said trees when the Parcel of Land was purchased. Mr. Barnaba Kiplagat Kimurgor Kemboi, PW2, confirmed that he was the secretary when the Agreement for Sale was being drafted and the Plaintiff was not present. Counsel implored upon this Court to take judicial notice that blue gum trees grow in cool and wet climate like Moisbridge naturally and do not need tending hence there is no maintenance required hence the Plaintiff further lied before the Court. Counsel added that the Plaintiff has not proved contribution of the same.
99. Counsel submitted that Motor Vehicle Registration Number KBV 361 A Double Cabin was purchased in the year 2019 through a car staff loan and it is currently registered in the name of the Defendant and NCBA Bank because he is still repaying the loan hence it is not available for division before this Court. Counsel added that the above notwithstanding, it is critical to note that the Motor Vehicle was purchased long after the Defendant has separated with the Plaintiff having separated in the year 2012 and had moved in with his current wife Miss Belvine Wanjiru Namu together with the children of his marriage with the Plaintiff hence there is no possibility that the Plaintiff contributed indirectly towards the purchase of the same. Justice A.C Mrima in IC v SS (Matrimonial Cause 01 of 2021) [2024]KEHC 3316 (KLR)(9 April 2024) (Judgment) considered indirect contribution only for the 8 years of the parties' active cohabitation and not the 14 years of their actual marriage having been married in the year 2007, separated in the year 2014 but officially got divorced in the year 2021.



100. With regard to Motor Vehicle Registration Number KCA 7xxx in the make of Isuzu Bus/Coach, Counsel submitted that the Defendant purchased the same using a loan from his employer in the year 2018 but the same has since been sold to James Nyarumi Nyandwaro hence it is not available for division between the parties herein.
101. With regard to child care and companionship as a measure of indirect contribution, Counsel submitted that after the parties separated in the year 2012, the Defendant took custody of their 4 children of the marriage and he was formally granted custody in the year 2023 before the children mediator under Eldoret Mediation 164 of 2023. That however the Plaintiff took the last born GKK into her custody in an attempt to steal a match before this Court but factually the Defendant has been supporting and staying with the children since the parties herein separated hence with regard to child care as a measure for indirect contribution the defendant relies on the decision of Justice A.C Mrima in IC v SS (Matrimonial Cause 01 of 2021)[2024] KEHC 3316 (KLR) (9 April 2024) (Judgment) supra and implores upon the Court to consider only the years the parties had active cohabitation and the Plaintiff was taking care of the children of the marriage.
102. Counsel submitted that the Plaintiff during her years of active cohabitation with the Defendant was not the most supportive partner as they separated on the grounds of infidelity in their matrimonial home, she also took a loan with SMEP DTM Limited where she misrepresented that Andrew Kiprono Maiyo was her husband at a time when she was married to the Defendant which culminated to their household goods being attached and the Defendant incurring unnecessary expenses in securing the household goods back. That the Plaintiff has also not witnessed the Purchase of any land parcel that was purchased by the Defendant. That it is worth noting that in various transactions examples being the Purchase of Moisbridge/Moisbridge / Block 7 (Lamaiywet) /9 (Part) 1 acre, it is the vendor's wife Mrs. Evelyn Sirma who witnessed the sale (Defendant's Exhibit Number 6) and that she is the one who also witnessed the Purchase of 0.7 of the same land parcel (Defendant's Exhibit Number 14), the Defendant's subsequent and current wife Ms. Belvine Wanjiru Namu witnessed the purchase of Land Parcel Baringo/Kewamoi A/2609. That these only goes to show that the Plaintiff was not a very supportive wife to the Defendant as evidence by her absence when the Defendant was making investments on behalf of their family.
103. Counsel implored the Court to take into consideration the Plaintiff's conduct during the subsistence of her marriage in determining this case and disregard the evidence of the Plaintiff's witnesses who purport to have witnessed her support the Defendant even though they were not part of their union and could not accurately allocate the extent of each parties' contribution and hence are not credible witnesses.
104. On whether a permanent injunction should be issued, Counsel submitted that a permanent injunction is perpetual and is issued after a suit has been heard and finally determined. Counsel added that permanent injunction fully determines the rights of the parties before Court and is usually meant to restrain the commission of an act by a party in order to protect the rights of the other party. He relied on the decision in Ennio Limited v Kenya Revenue Authority & another (Civil Suit E018 of 2021) [2024] KEHC 8935 (KLR) (24 July 2024) (Judgment). In light of the foregoing, Counsel urged that the Plaintiff has not proved that the Defendant is a threat to her should she be a successful litigant.
105. Counsel further submitted that the Plaintiff alleged that the Defendant had threatened her peace in the month of June 2023 but she was not able to prove the same because no charges were preferred against him and the said allegations were not supported with any evidence during the hearing. Counsel urged that since the Plaintiff has not proved any threat from the Defendant before the institution of the suit and during the pendency of the same, an order for Permanent Injunction is unmerited. In conclusion,



Counsel submitted that the Plaintiff has not proved her case with regard to the Matrimonial Properties that were acquired during the subsistence of her marriage with the Defendant.

Determination

106. Contribution towards the acquisition of matrimonial property is defined under Section 2 of the Matrimonial Property Act, 2013 in the following terms:-

In this Act, unless the context otherwise requires—

“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.

107. Section 6 of the Matrimonial Property Act is the applicable law whereby it defines matrimonial property as:

- (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.

108. What constitutes contribution to the acquisition of matrimonial property by the parties to a marriage is defined in Section 7 of the Matrimonial Property Act in its terms 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.”

109. The key issue that must be addressed is establishing the precise timeframe during which the parties were legally married. This determination is essential because it will govern whether the property in question was actually obtained while the marriage was legally valid and subsisting.

110. In the case of *J.M.V v F.M.C* [2018] eKLR the Court stated as follows: -

.....for a property to qualify as matrimonial property it ought to have been acquired during the subsistence of the marriage between the parties unless otherwise agreed between them that such property would not form part of the matrimonial property.....”

111. This Court must also consider the Applicant's indirect contributions during the marriage, including her role in maintaining the matrimonial home, caring for their children and managing the properties. These non-monetary contributions are equally significant and must be factored into any equitable distribution of the matrimonial property.

112. The Court of Appeal in *PNN v. ZWN* (Supra) (Civil Appeal No. 128 of 2014) spoke on the question of division of matrimonial assets in Kenya. Justice Kiage J.A observed that it would be surreal to suppose that the Constitution somehow converts the state of coverture into some sort of Laissez-passer,



a passport to fifty percent wealth regardless of what one does in that marriage. He noted further as follows:

Industry, economy, effort, frugality, investment and all those principles that lead spouses to work together to improve the family fortunes stand in peril of abandonment were we to say *the Constitution* gives automatic half-share to a spouse whether or not he or she earns it. I do not think that getting married gives a spouse a free to cash cheque bearing the words “50 per cent.

Thus it is that *the Constitution*, thankfully, does not say equal rights “including half of the property.” And it is no accident that when Parliament enacted the *Matrimonial Property Act*, 2013, it knew better than to simply declare that 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.”

113. Article 45(3) of *the Constitution* of Kenya 2010 provides that:

“parties to a marriage are entitled to equal rights at the time of the marriage, during the marriage and at the dissolution of the marriage”

114. In the instant case, is the defendant’s case that even as their marriage was legally dissolved in the year 2022, the plaintiff and himself ceased being a couple in the year 2012 when they separated. That by then, he was already cohabiting with his now wife whom he started living with in the year 2006 and they legalized their marriage in the year 2015 and that most of the property that he acquired subsequent to the acquisition of the Moi’s Bridge property though listed in his name was acquired with substantial contribution from Beverline in whose name some of the properties were initially registered before the same were transferred to his name.

Notwithstanding this line of evidence and submission by the defendant, it is to be noted that the definition of matrimonial property as provided under Section 6 of the Act apart from the matrimonial home or homes as well as the household goods and effects in the matrimonial home or homes also includes any other immovable and movable property jointly owned and acquired during the subsistence of the marriage. It is therefore necessary that the time frame of the subsistence of the marriage between the parties be established therefore.

115. In this regard, I would agree with the submissions made by Counsel for the plaintiff that Counsel contended that legally speaking the alleged separation in 2012 did not in any way affect the legal status of the marriage between the Plaintiff and the Defendant. Counsel maintained that in law, the marriage was only concluded by the decree nisi issued following the divorce petition initiated by the Respondent. It is noteworthy that Counsel for the defendant in his submissions save to isolate the properties that he submitted that the court ought not include for reasons that some did not exist and others were acquired with substantial contribution from the defendants now wife also did concede that until the legal dissolution of the marriage between the parties, in light of the provision of the law as provided in Section 6 of the Matrimonial Properties Act, , all the properties listed by the Plaintiff are matrimonial properties having been acquired during the subsistence of the Parties’ marriage between 1997 and February 2022 when their marriage was dissolved. In this regard, it follows therefore that any and every property that falls within this bracket is available for distribution between the parties.

116. It should further be noted that as provided under Section 14 of the *Matrimonial Property Act*, the presumption is that all the matrimonial property acquired during the subsistence of the marriage as the court has already determined whether with the defendant’s direct finances or in partnership with his now current wife as he has alleged, that property is held in trust for the other spouse for reasons that this



legal presumption reflects the equitable principle that both parties to a marriage are presumed to have contributed to the acquisition of matrimonial property, unless the contrary is proven. The court notes that notwithstanding the fact that the defendant has stated that these properties were acquired with the substantial contributions from his said wife, most if not all of the properties as per his testimony, were eventually transferred to him and are now registered in his name thus casting a lot of doubt in the mind of the court as to the credibility of his assertions.

117. Contribution is an issue of fact that calls for evidence. In the instant case, it is not in dispute that the plaintiff herein was a housewife and that the defendant married her when she was still a student in form three and he was in university. The evidence of the plaintiff is that as man and wife they lived 1st in Baringo where they acquired their first property but they did not live there long but subsequently moved to Moi's Bridge where they established their matrimonial home. It is also not in dispute that during the subsistence of the marriage the plaintiff lived at home in Moi's Bridge and her husband lived in Nairobi where he worked and that he would come home to Moi's Bridge for a few days and then go back to Nairobi.
118. Whereas the court takes into consideration the evidence of the defendant that the plaintiff not only did not contribute financially to the acquisition of any of the matrimonial properties which fact the plaintiff does not deny and that instead, she was a lazy and wasteful and non-industrious wife who did not support him in any way. That over and above that she also landed him into financial difficulty when she took an SMEP loan which when she was not able to pay led to the distress of his property which she had offered as collateral for the loan and which he is the one who had to eventually pay for and also caused him to institute court proceeding for their recovery.
119. That this is buttressed by the fact that whenever he was buying property, she was never even there to be a witness to the transactions. This despite the fact that he did not in any way contradict PW3 when he stated that the plaintiff was present at the sale of the Moi's Bridge land to the defendant That contrary to the plaintiff's assertions he is the one who worked the farm and planted the trees on the other farm. The court notes however that when pressed under cross examination to produce evidence of the farm inputs that he bought to plant the crops and work the land, he was unable to do so. He maintained that even when he opened a salon for her, she was unable to properly and productively run it and eventually ran it down causing him to lose all the investment that he had sunk into it including all the equipment.
120. That said, the court also takes into consideration the plaintiff's evidence that even though she did not make any financial contribution towards the acquisition of the matrimonial property, it is her evidence and that of her witnesses that she is the one who worked the land with her hands as there was no tractor for her use and planted crops on the said land and tended to them. That she is the one oversaw and supervised the construction, establishment and management of the home. She gave birth to lived with and took care of their four children before they were eventually taken by the defendant after the divorce, and that even though she now only lives with her first born at the moment, the other children go to stay with her Moi's Bridge during the school holidays. She reared the livestock in the home including the cows, sheep and chicken and these would oftentimes be sold by the defendant to pay school fees and take care of the other needs of the home including the further development of the home. Contrary to the defendant's assertion, she stated that she is the one who planted the blue gum trees on their farm and tended to them throughout.
121. Taking into account the evidence of both parties, the court is satisfied that the plaintiff by way of her evidence and that of her witness, who the court is satisfied were credible, honest and truthful, and whose evidence very well corroborated that of the plaintiff on all the material particulars pertinent to her case, and which evidence the court is satisfied the evidence of the defendant did not sufficiently and/or in any significant manner contradict controvert and/or rebut, has on a balance of probabilities



proved that she did contribute non-monetarily to the acquisition and development of the matrimonial property as envisaged under Section 7 of the *Matrimonial property Act*.

122. Most importantly and of special significance, the court also takes cognizance of the fact that over and above taking on all the responsibilities as herein above summarized, the plaintiff also accorded the defendant the much needed spousal companionship as a wife that enabled him comfortably work away from home and acquire the much needed financial wherewithal to that enabled him purchase and develop the matrimonial home under the supervision, management and care of the plaintiff. Indeed, as both parties testified, when they got married, they were both students, the plaintiff in Secondary School and the defendant in university and it is the plaintiff who had to abandon her studies and take on the role of a stay at home wife and mother. This in my considered view does truly count for a lot in the marriage between the two. This is because while the respondent initially acquired the property and made the foundational investment, the Applicant made substantial, even though non-financial contributions that enhanced the property's value during the marriage.
123. This being the case then, this Court must ensure a fair and equitable division based on the respective contributions of both parties, both monetary and non-monetary. In this regard, the court is guided by the decision of the Supreme Court of Kenya which conclusively settled the issue of how matrimonial properties should be divided in the case of Joseph Ombogi Ogentoto v Martha Bosibori Ogentoto Petition No. 11 of 2020 where it was held as follows:

...we also find that Article 45(3) acts as a means of providing for equality as at the time of dissolution of marriage but such equality can only mean that each party is entitled to their fair share of matrimonial property and no more. Nowhere in *the Constitution* do we find any suggestion that a marriage between parties automatically results in common ownership or co-ownership of property (hence vesting of property rights) and Article 45(3) was not designed of the purpose of enabling this Court to pass property rights from one spouse to another by fact of marriage only.....

our view is that, while Article 45(3) deals with equality of the fundamental rights of spouses during and after dissolution of marriage, we must reiterate that equality does not mean the re-distribution of proprietary rights at the dissolution of a marriage. Neither does our reading of this provision lead to the assumption that spouses are automatically entitled to a 50% share by fact of being married.....

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.....

Therefore, in the event that a marriage breaks down, the function of any Court is to make a fair and equitable division of the acquired matrimonial property guided by the provisions of Article 45 (3) of *the Constitution*. To hold that Article 45(3) has the meaning of declaring that property should be automatically shared at the ratio of 50:50 would bring huge difficulties within marriages and Tuiyot, J (as he then was) has explained why above. Noting the changing times and the norms in our society now, such a finding would encourage some parties to only enter into marriages, comfortably subsist in the marriage without making any monetary or non-monetary contribution, proceed to have the marriage dissolved then wait to be automatically given 50% of the marital property. That could not have been the intention of our law on the subject.”



122. The court is also further guided by the principles established in CWM v JPM (2017) KECA 2011KLR, PNN v ZWN [2017] Eklr, AQY v OJM (Matrimonial Cause E008 of 2023) [2024] KEHC8547(KLR). In light of my conclusions and findings herein, I now hereby apportion the plaintiff's contribution to the acquisition, development, maintenance of the matrimonial property at 35% and the defendant's contribution at 65%. In determining what comprises the full extent of the matrimonial properties that are available for distribution, the court will go by the list of properties as provided by defendant, and it matters not that the property is still registered in the name of the defendant and/or has already been disposed of by way of sale.
122. In this regard, the court in noting that the defendant does not object to the matrimonial home and all the household effects therein being awarded to the plaintiff, the court now hereby so awards the said matrimonial home situate on Land Parcel No. Moisbridge/Moisbridge/Block 7(Lamaiywet)/xxx (Part) measuring 1 acre to the plaintiff. Further, with regard to the rest of the matrimonial property, the court now hereby orders that in lieu of the plaintiffs share to each and every one of these properties, and it matters not that they are registered in the name of the defendant or have already been disposed of by way of sale as stated by the defendant, based on her contribution ratio of 35%, the court now hereby awards the plaintiff that entire piece of land known as Moisbridge/Moisbridge/Block 7 (Lamiywet) 9 (Part) comprised of 1.1 Acres as well As Moisbridge/Moisbridge/ Block 13 (Part) comprised of 1/2 an acre together with all the improvements thereon and including all the trees thereupon planted.
122. The rest of the matrimonial property shall go the defendant exclusively. The same are as hereunder;
- i. Baringo/Konoo/xxxx measuring 0.03 Ha
 - ii. Baringo/Keturwo/2xxx measuring 0.23 Ha
 - iii. Baringo/Keturwo/ 29xx measuring 1.53 Ha
 - iv. Baringo/Keturwo 294xx measuring 0.96 Ha
 - v. Baringo/Kewamoi "A"/3xxxx measuring 0.008 HA
 - vi. Baringo/Keturwo/ 299xx measuring 0.93 Ha
 - vii. Land parcel measuring 2 Acres located in Sessianin Baringo North
 - viii. LR. NO. 882 Sessianin Baringo North
 - ix. Motor vehicle Reg. KBV 3xxx x Toyota pick up
 - x. Motor vehicle Reg. KCF 8xx x Isuzu Bus
122. Lastly, on the permanent injunction sought, it is my well-considered opinion that in light of the fact that the parties are already divorced and all the children born of the plaintiff and the defendants have all now attained the age of maturity, I am satisfied that the prayer for perpetual injunction as prayed by the plaintiff is merited and warranted since the defendant shall not be prejudiced by this order in any way in light of the prevailing circumstances as herein stated. The court therefore allows the application as follows;
- That a permanent injunction be and is now hereby issued restraining the Defendant by himself, his servants, agents and/or employees from interfering with the Plaintiff's lawful enjoyment and quiet possession of the properties awarded to her by this Court.

READ DATED AND SIGNED AT ELDORET ON 19TH DECEMBER 2025

E. OMINDE



JUDGE

