



**DNB v HMK (Matrimonial Suit E002 of 2022)  
[2026] KEHC 432 (KLR) (12 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 432 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
MATRIMONIAL SUIT E002 OF 2022  
SM MOHOCHI, J  
JANUARY 12, 2026**

**BETWEEN**

**DNB ..... APPLICANT**

**AND**

**HMK ..... RESPONDENT**

**JUDGMENT**

**Brief Background**

1. The Parties herein DNB “the Applicant” and HMK, “the Respondent” were living as man and wife from around the year 1993 under the Kikuyu customs and they were blessed with three issues. The marriage was solemnized on 10<sup>th</sup> June, 2005. On 29<sup>th</sup> March 2023, the union was dissolved via Nakuru Chief Magistrate’s Court Divorce Cause No.140 of 2021 and a decree absolute issue to the effect. The Applicant thus moved this Court seeking distribution of matrimonial property acquired during the duration of the union.
2. By Originating Summons dated 17<sup>th</sup> May, 2022, the Applicant sought the following prayers:-
  - i. That the Honourable Court be pleased to declare that the following immovable properties acquired during the subsistence of the marriage with the joint efforts of the Applicant and the Respondent and developed by their joint funds and efforts are jointly owned by the Applicant and the Respondent though registered in the Respondent’s name in trust for both:-
    - a. Title No. Nakuru/Piave Settlement Scheme XXX
    - b. Title No. Kiambogo/kiambogo Block 2/XXX (Mwariki)
    - c. Title No. Kiambogo/Kiambogo Block 2/XXX
    - d. Nakuru Municipality Block 3/XXX (Kenlands)



- ii. That this Court be pleased to order the division of the property upon valuation being carried out to establish the value
  - iii. That this Honourable Court gives injunctive orders restraining the Respondent from disposing, transferring or in any way interfering with the parcels number Title No. Nakuru/Piave Settlement Scheme XXX, Title No. Kiambogo/Kiambogo Block 2/XXX (Mwariki), Title No. Kiambogo/Kiambogo Block 2/XXX and Nakuru Municipality Block 3/XXX (Kenlands)
  - iv. That this Honourable Court be pleased to grant such further or other reliefs as may be just in the circumstances.
  - v. That costs of this Application be provided for.
3. The Application is premised on the grounds on the face of the Application and further built upon the Supporting Affidavit of DNB sworn on the 17<sup>th</sup> of May, 2022 and a Further Affidavit sworn on 5<sup>th</sup> October, 2023. The Applicant contends that during the subsistence of the marriage to the Respondent, they jointly acquired various properties which are considered matrimonial property and the same ought to be declared as such and shared equally even though they are registered in the name of the Respondent.
4. The Respondent opposed the Application by way of Replying Affidavit sworn on 15<sup>th</sup> June, 2023 and a Further Affidavit sworn 27<sup>th</sup> November, 2023. The Respondent argued he acquired the properties and developed them without the input of the Applicant despite her being employed.

### **Counterclaim**

5. The Respondent by way of Originating Summons dated 16<sup>th</sup> October, 2024 in form of a Counterclaim to the Originating Summons dated 17<sup>th</sup> May, 2022 wherein he sought the following orders: -
- i. The Respondent (now Applicant) reiterates the contents of his Replying Affidavit sworn on 15<sup>th</sup> June, 2023, further Affidavit sworn on 27<sup>th</sup> November, 2023 and Respondent's further list of documents dated 7<sup>th</sup> December, 2023 avers that as a former spouse of the Applicant (now Respondent) herein is entitled to legal and equal share of all properties listed below and acquires during the pendency of the marriage herein by virtue of being matrimonial properties.
  - ii. That all those parcels of land known as:
    - a. Mutira/Kangai/XXX measuring approximately 0.101 HA
    - b. Title No. Dundori/Lanet Block 2/XXX (Tabuga) measuring approximately 0.45HA.
    - c. Title No. Dundori/Lanet Block 2/XXX (Tabuga) measuring approximately 0.45HA.
    - d. Title No. Dundori/Lanet Block 11/XXX (Formerly LR No. 464/19/XXX (Lanet)Together with all the developments and buildings thereon (if any), which were acquired during the subsistence of the marriage with the joint efforts of both the Applicant and the Respondent but registered in the name of the DNB be declared matrimonial properties subdivided into equal shares (both in area, value and buildings) and the two subdivisions be registered separately and titles or certificates of leased be separately issued in the names of HMK and DNB
  - iii. That the Honourable Court do grant any further such reliefs as it may deem fit to grant.



- iv. That costs of this counter claim be borne by the Respondent.
6. The Counterclaim is supported by the Affidavit of HMK sworn evenly. The Respondent swore a Further Affidavit on 5<sup>th</sup> December, 2023.
7. In opposing the Counterclaim, the Applicant filed a Replying Affidavit sworn on 4<sup>th</sup> November, 2024.
8. The matter proceeded by way of viva voce evidence and thereafter parties were directed to file written submissions.

### **Applicant's Submissions**

9. According to the Applicant, she is entitled to a 50% share of the matrimonial properties.
10. The Applicant relied on the provisions of Sections 12 and Section 14 (a) of the *Matrimonial Property Act* to submit that she was an equal contributor to the acquisition and development of the family's wealth including purchase of the properties and their development.
11. She argued that by law property registered in the name of one spouse is presumed to be held in trust for the other spouse.
12. According to the Applicant, by virtue of Section 2 of the *Matrimonial Property Act*, contribution need not to be monetary as non-monetary contribution in the nature of taking over matrimonial duties applies and placed further reliance in the Court of Appeal decision in TKM vs SMW [2020] eKLR where the Court underscored the principle in the size of Muthembwa v Muthembwa [2002] 1 EA 186 on what amounts to contribution while bearing in mind the principle of fairness.
13. It was the Applicant's submission that the provisions of Section 45(3) of the *Constitution* on parties to a marriage being entitled to equal rights during the marriage and at dissolution, override the provisions of the *Matrimonial Property Act* which provide that contribution to acquisition being the determinant factor during apportionment of share.
14. The Applicant also submitted that the parties are entitled to equal shares of their matrimonial properties and in seeking a 50% share of the said properties and cited the case of PWK v JKG [2015] eKLR.

### **Respondent's Submissions**

15. The Respondent did submit that he was entitled to an equal of higher share of the properties purchased and owned by the Applicant.
16. In support of his case, the Respondent submitted and relied on Section 7 of the *Matrimonial Property Act* the case of PNN vs ZWN [2XXX] eKLR to submit that ownership of matrimonial property vests on the spouses according to contribution.
17. The Respondent in regards to also relied on ENK v JK [2015] eKLR and AMM v SMN [2022] KEHC 367 (KLR) to submit even inherited property acquired during the subsistence of the marriage form part matrimonial property.
18. The Respondent submitted that although in such a case each party bears their own costs, it was argued that the counterclaim was necessitated by the actions of the Applicant and as such in dismissing the suit the Applicant should bear costs of the suit and counterclaim.



## Analysis and Determination

19. In determining the Originating Summons dated 17<sup>th</sup> May, 2022 and the one dated 16<sup>th</sup> October, 2024 the issues manifest for determination are as follows:-
- i. Which properties are considered matrimonial property?
  - ii. Whether the Applicant during the substance of their marriage contributed towards the acquisition and development of the matrimonial properties and if so to what extent?
  - iii. Whether the Applicant and Respondent are is entitled to be given half of all the matrimonial properties despite them being registered as owners separately to the exclusion of the other in the properties
17. In determining the issue of what properties are considered matrimonial, the starting point is understanding what matrimonial property is. I am guided by the *Matrimonial Property Act* under Section 6 which provides that matrimonial property includes; a) the matrimonial home or homes, b) household goods and effects in the matrimonial home or c) houses or any other immovable and movable property jointly owned and acquired during the subsistence of the marriage.
19. The Respondent has submitted that properties acquired by the Applicant form part of matrimonial property and he ought to benefit from the proceeds therein. He cited *AMW v JGK* [2021] eKLR and *MNH FHM* [2018] eKLR. On the other hand, he vehemently denies that the properties he acquired do not form part of matrimonial property. The Respondent cannot eat his cake and have it. What is good for the goose is most certainly good for the gander.
19. The following properties do not form part of Matrimonial property for the reasons itemized:-
- a. Title No. Kiambogo/kiambogo Block 2/XXX (Mwariki); it is evident that the property was sold vide sale agreement dated 3<sup>rd</sup> April, 2018 and transferred to one Lawrence Micheal Kamau Chege as shown in the green card entry of 2<sup>nd</sup> September, 2020. There is a spousal consent from the Applicant acknowledging the sale. Although in her sworn testimony she denies signing the consent, that remains words without proper proof. The same can therefore not be said to be matrimonial property.
  - b. Nakuru Municipality Block 3/XXX (Kenlands), there Respondent annexed a sale agreement dated 11<sup>th</sup> January, 2XXX for the sale of this property and a spousal consent acknowledging the sale. The copies of green card and title deed on record indicate that the property was registered to one Job Ng'ang'a Ndung'u on 3<sup>rd</sup> September, 2020. To this end this property also does not form part of the matrimonial property.
  - c. The record also shows that Title No. Dundori/Lanet Block 2/XXX (Tabuga) and Title No. Dundori/Lanet Block 2/XXX (Tabuga were both sold to Isaac Mwangi Kibaara vide sale agreement dated 21<sup>st</sup> May, 2020 and 17<sup>th</sup> August, 2020 respectively. The Respondent has conceded the same were sold albeit being secretly sold, they can therefore not be said to be available for distribution.
  - d. Mutira/Kangai/XXX were sold to Jane Wamaitha Wangai vide sale agreement dated 31<sup>st</sup> October, 2022. This too is not available for distribution.
19. The properties listed in the immediately preceding paragraph above have been sold to third parties during the marriage. Each party is accusing the other of secrecy or being in cahoots with the third parties to defraud the other of a share of matrimonial property or to steal a march. If the parties felt



there having been likelihood of fraud or forgery of signatures or otherwise the same should have been taken up with the relevant avenues.

19. This is a Court of evidence and any party that felt that the properties were still owned by the other and registered to third parties in order to defraud the other or defeat justice should have availed concrete proof. Challenge of sale of property can only be done in the Land Court. This Court will only deal with distribution of matrimonial property
19. To this end, the evidence on record shows that the only properties that meet the focus of Section 6 are Title No. Nakuru/piave Settlement Scheme XXX, Title No. Kiambogo/Kiambogo Block 2/XXX (Mwariki) and Title No. Dundori/Lanet Block 11/XXX (Formerly LR No. 464/19/XXX (Lanet) as they were acquired during the substance of the marriage. See *T.M.V. vs F.M.C* [2018] KEHC2482 (KLR).
19. On Whether the parties during the substance of their marriage contributed towards the acquisition and development of the matrimonial properties and if so to what extent.
19. Section 2 of the *Matrimonial Property Act* defines contribution 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.
19. Contribution goes beyond the financial/monetary investments. The parties have cited precedent in favour of their arguments. In appreciating the decision in *Muthembwa v. Muthembwa* [2002] 1 EA 186 I have to consider the principle of fairness and that each case is different.
19. As for Title No. Dundori/Lanet Block 11/XXX (Formerly LR No. 464/19/XXX (Lanet) was purchased by the Applicant but was not included in her Originating Summons. She however testified that she inherited it and has no objection to it being subdivided. The Respondent in his testimony testified that the same was acquired without his input he was however not interested in them. He suggested each to remain with what they have.
19. Regarding Title No. Nakuru/Piave Settlement Scheme XXX it is the property that houses [Particulars Withheld] Secondary School. The Respondent testified and submitted that the Applicant did not take part in development of the property and even refused when asked to assist moreso when the school ran into some financial challenges. The Applicant on the other hand claimed that she took over the household responsibilities in order to allow the Respondent service the loans that were acquired towards the development of the property.
19. The Respondent has also provided Share transfer documents and resolution to the effect that the Applicant transferred her shares and resignation documents showing she resigned as a director. An allegation that the Applicant has denied claiming the documents were forgery and produced a forensic examiners report (Exh 2a-b).



19. The allegations of forgery were never taken up with the relevant authorities and there is no evidence that the Respondent being charged for the alleged forgery. A serious litigant would have had to do more to substantiate such claims.
19. Nyakundi J. in MNH vs. FHM [2018] eKLR stated that:-
- “The logical conclusion flowing from the judicial precedence quoted above is that in determining the distribution of matrimonial property at the dissolution of a marriage, the Trial Court ought to dispassionately scrutinize the direct and indirect contribution of each party to the marriage in acquisition and/or development of the suit properties.”
19. The Respondent went to great lengths to show that he acquired the property solely. He has submitted documentation of the efforts and contribution he made towards the development of this property. The Applicant has not shown much if any.
19. In the circumstances and bearing in mind the evidence on record, this Court is satisfied that the Applicant did not make any notable monetary or non-monetary contribution towards the acquisition and development of this property and the same was solely acquired and developed by the Respondent.
19. Pertaining Title No. Kiambogo/Kiambogo Block 2/XXX (Mwariki). The Respondent submitted that he constructed the house and the Applicant moved in with him when they got married. According to Section 2 of the Act, ‘Matrimonial home’ has been defined as:-
- any property that is owned or leased by one or both spouses and occupied or utilized by the spouses as their family home, and includes any other attached property.
19. The Applicant in her sworn testimony and filed documents has contended that she is entitled to share the property equally with the Respondent. She argues that she took care of the children and household expenses and used her money towards the basic need of the family. That argument that was vehemently opposed by the Respondent.
19. Both the Applicant and the Respondent have each annexed M-Pesa transactions of monies sent to their children to prove they have been contributing to the upkeep and wellbeing of their children. The Respondent has annexed payment records of his contribution toward the household expenses and development of the property. Monetary contribution of the Applicant is falling short in the circumstances.
19. Section 14(b) of the *Matrimonial Property Act* provides that:-
- Where matrimonial property is acquired during marriage—
- (b) in the names of the spouses jointly, there shall be rebuttable presumption that their beneficial interests in the matrimonial property are equal.
19. Nonetheless, Section 7 of that Act, provides as follows:-
- Ownership of the matrimonial property vests in the spouses according to the contribution of other spouse towards its acquisition and shall be divided between the spouses if they divorce or their marriage is otherwise dissolved.
19. On the other hand, in as much as the Applicant has not evidenced monetary contribution, the law recognizes the aspect of non-monetary contribution. In analyzing contribution, it imperative to note that management of matrimonial home, childcare and companionship is in the nature of non-



monetary contribution. This Court takes into account the Applicant bore the burden of childbearing, a task and responsibility which the Respondent did not perform. Then comes nurturing the children to a point of some resemblance of independence.

19. I have considered the argument by the Respondent that the Applicant never performed household duties as there was domestic help. In as much as there was domestic help some tasks like management of the home and emotional and psychological needs of the children can only be performed by the mother and wife and not the domestic help a fact that must be appreciated by this Court in determining apportionment of contribution.
20. No one gets into a marriage with the notion that it will end one day. The assumption is forever thereafter. Therefore, it is not common for one to hold on to receipts and evidence of every transaction carried during the marriage to produce as evidence to be produced in Court. Absence of actual evidence does not negate contribution.
19. I decline the theory advanced that, the Applicant contributed zero towards the matrimonial home. A mother's and a wife's contribution cannot be gauged in monetary terms. Such contribution deserves the weight it has.
19. I am convinced the Applicant has proved non-monetary contribution on a balance of probability.
19. The final question thus is what extent should the matrimonial property be distributed. Although the Constitution on Article 45(3) grants equal rights to parties to a marriage, an argument propounded by the Applicant, it does not translate to equal share of the properties acquired unless it can be fully ascertained that the contribution was equal by evidence.
19. The Court of Appeal in EGM vs. BMM [2020] KECA (KLR) opined as hereunder:-

“..We think it was erroneous for the learned judge to assume and hold that the Constitution gives spouses an automatic 50% share of the matrimonial property simply by being married... The stated equality means no more than that the Courts to ensure that both parties at the dissolution of a marriage get their fair share of the property. This has to be in accordance with their respective contribution. It does not involve denying a party their due share or unfairly a party by giving such party more than he or she contributed....”

19. There is a difference between fair share and common ownership. Having found that on a balance of probability the Applicant made non-monetary contribution that does not in itself translate to 50% share.
19. The Applicant stated she contributed monies over the years to the properties but has not shown any evidence to the effect. I am cognizant of the fact the despite the fact that a party was earning a living, it does not necessarily translate to mean that the individual did actually bring home proceeds of their income. Odunga J (as he then was) opined in EKTm v ECC [2021] KEHC 1359 (KLR) that:-

(76) Again the mere fact that a party has access to financial facilities does not necessarily mean that the said facilities were spent towards the development of the properties in question though it would be evidence of his or her capability to do so. I agree with the position in the case of T M W vs. F M C [2018] eKLR, where the court held that:

The Petitioner herein stated in her supporting affidavit that she sometimes ventured into small businesses for the purposes of helping her husband to take care of the family however no proof of



the existence of such endeavours was produced before. I therefore find that the Petitioner's contribution cannot be said to have been in the realm of monetary contribution since the same was not proved on a balance of probability.”

19. The Applicant has admitted to making purchases and sales of property to the benefit of the marriage but has not tendered evidence to the fact. It would be inaccurate to opine that the Applicant made substantial monetary contribution towards acquiring, developing and improving the matrimonial properties especially the matrimonial home. That would be prejudicial to the Respondent who has shown he was the prime mover in securing loans for development of the properties as well as taking care of the other basic needs of the family.
19. The long and short of the above is that the Originating Summons dated 17<sup>th</sup> May, 2022 and the one dated 16<sup>th</sup> October, 2024 partially succeed to the following extent: -
- i. A declaration be and is hereby issued that Title No. Nakuru/piave Settlement Scheme XXX, Title No. Kiambogo/Kiambogo Block 2/XXX (Mwariki) and Title No. Dundori/lanet Block 11/XXX (Formerly LR No. 464/19/XXX (Lanet) are matrimonial property.
  - ii. The Respondent is entitled to the whole of the property known as Title No. Nakuru/Piave Settlement Scheme XXX.
  - iii. The Applicant shall retain the whole of Title No. Dundori/Lanet Block 11/XXX (Formerly LR No. 464/19/XXX (Lanet).
  - iv. Title No. Kiambogo/Kiambogo Block 2/XXX (Mwariki) be distributed to the Applicant and the Respondent at the ratio of 30:70 respectively being their contribution to the development of the property.
  - v. That Title No. Kiambogo/Kiambogo Block 2/XXX (Mwariki) then be valued by a registered valuer to be agreed or default to be appointed by Court and the Respondent is at liberty to buy out the Applicant's share of contribution.
  - vi. By the nature of these proceedings, there shall be no order as to costs.
  - vii. Any party aggrieved by the orders made herein shall be at liberty to challenge the same at the Court of Appeal within thirty (30) days.

It is ordered.

**DATED, SIGNED AND DELIVERED AT NAKURU ON THIS 12<sup>TH</sup> DAY OF JANUARY 2026**

**MOHOCHI S. M.**

**JUDGE**

