



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAIROBI**

**FAMILY DIVISION**

**ORIGINATING SUMMONS NO. E036 OF 2023**

**JAPHETH GACHIE NJENGA.....**

**APPLICANT**

**VERSUS**

**NANCY WANJIRU GATHINGI.....**

**RESPONDENT**

**JUDGMENT**

**INTRODUCTION**

1. This Judgment is with regard to Originating Summons dated 19<sup>th</sup> April 2023 presented by JAPHETH GACHIE NJENGA (The Applicant) under the provisions of Order 37 Rules 1, 14 & 15: Order 40 of the Civil Procedure Rules and

Section 7 of the Matrimonial Properties Act 2013. The Applicant seeks the following orders-

- a) THAT it be declared that all that piece of land being House No. 181 at Nairobi Dam Estate in Nairobi Area together with all buildings and developments thereon acquired and/or developed by the funds and efforts of the Applicant wholly with the exclusion of the Respondent's contribution during their marriage be declared the applicant's property in whole.
- b) THAT an Order do issue declaring that the applicant is entitled to the full value of the property (100%) of the said property/ House No. 181 at Dam Estate in Nairobi Area valued at Kshs 8 million and all the developments thereon.
- c) THAT it be declared that the household goods in the House No. 181 at Dam Estate in Nairobi Area whose value is estimated at Kshs 1 million acquired by the Applicant is being claimed by the Respondent in trust and for the beneficial interest of the Applicant only.
- d) Spent

- e) THAT this Honourable Court be pleased to make such further orders as the interests of justice may require.
- f) THAT the Respondent be condemned to pay the costs of this suit.

### **SUMMARY OF THE APPLICANT'S CASE**

2. The Originating Summons is supported by the affidavit of the applicant sworn on 19<sup>th</sup> April 2023. The parties formalised their marriage under Kikuyu customary law on 7<sup>th</sup> September 1996. The marriage was blessed with 4 children. Owing to irreconcilable differences, the same was dissolved on 28<sup>th</sup> November 2022. He avers that at all material times he was the primary bread winner, the respondent was in and out of employment and her income was negligible and did not contribute much to the maintenance of the family.
3. He solely purchased and developed property NAIROBI/ BLOCK 106/218. He also claims all the household effects in the matrimonial home. It was his evidence that he singlehandedly met the material needs of the family, paying fees, meeting the medical needs of the children and doing

household shopping. He states that this is attested to by letter of gratitude the respondent wrote to him on 15<sup>th</sup> May 2010.

### **SUMMARY OF THE RESPONDENT'S CASE**

4. In opposing the Originating Summons the Applicant has sworn affidavit on 9<sup>th</sup> June 2023. She states that she has been in employment from the inception of the marriage and that even when she was in between jobs she strived to earn an income through her industry. With her money she met the day to day expenses of running the home and at one time she withdrew her savings and handed them over to the applicant as her contribution to the purchase of the matrimonial home.

5. She testified that during the pendency of the marriage the following assets were acquired-

1) Matrimonial Home- Dam Estate Hse. No. 181

Langata where they have lived since 2004

2) Amare Apartment- Imara Daima (LR 209/ 18208)

3) Nairobi North Commercial Zone (Ruaraka) Plot  
190B

4) Molo home (which was gifted to us by in laws upon marriage of the parties

5) A bookshop in Westlands Modern Market

6) Shares in various companies- Kenya Power, Kenya Airways

6. Further she testified that the following motor vehicles were acquired during the pendency of the marriage

1) Toyota Land Cruiser KAU 577G

2) Mercedes Benz KAU 970Q

3) Mercedes Benz KAP 777S

4) Toyota Sienta KCN 387J

7. She therefore demands that her contribution towards the acquisition of these assets ought to be factored in and she be granted her share of the matrimonial property.

### **SUBMISSIONS**

8. At the conclusion of the hearing both parties have filed written submissions. The Submissions of the applicant are dated 16<sup>th</sup> July 2025, while those of the respondent are dated 12<sup>th</sup> August 2025.

9. The applicant frames the following as the issue for determination-

1) Whether the applicant (sic) is entitled to the full value of the suit property namely **House No. 181 Dam Estate Nairobi** nor any properties cited in her replying affidavit.

2) What remedies are available to the applicant.

10. It is submitted that the only property acquired during the pendency of the marriage and in relation to which the Court can make a declaration on the parties' respective shares is the matrimonial home; Dam Estate House No. 181 Langata.

11. Further, it is submitted that the respondent did not place any evidence to support her claim that other assets were acquired during the pendency of the marriage.

12. The applicant submits that having failed to prove either monetary or non-monetary contribution towards the acquisition of the matrimonial home, the respondent's claim must fail. Reference is made to the decisions in **RJC v RKR & another (Civil Suit E024 of 2021) [2025] KEHC 469 (KLR) (27 January 2025) (Judgment)** and **AIN v IMM [2019] eKLR**

13. The respondent frames the following as the issues for determination-

- 1) Why property LR No. NAIROBI/BLOCK/106/218 is a matrimonial property.
- 2) The monetary and non- monetary contributions that the Respondent made towards the acquisition and development of the said property; and
- 3) Why this Honourable Court should be moved to equally distribute the matrimonial property, being LR No. Nairobi Block / 106/218.

14. It is submitted that the property NAIROBI/ BLOCK /106/218 is indisputably matrimonial property, the same having been acquired during the pendency of the marriage and the parties having established their matrimonial home thereat, Reference is made to the decision in **MNJ v WCK (Matrimonial Cause No. E012 of 2022) [2024] KEHC 8509 (KLR) (5 June 2024) (Judgment)** and the Court's interpretation of Section 6 of the Matrimonial Property Act.

15. It is further submitted that the Court is obligated to consider both the monetary and non-monetary contribution of the respondent. Reliance is placed on the decision in

**MNH V FHM [2018] eKLR and AWM v JGK [2021] eKLR.**

16. On account of the foregoing it is submitted that the Court should find that notwithstanding that the property is registered in the sole name of the applicant, since it is matrimonial property it should be divided equally between the applicant and the respondent and reliance placed on the decision in **MNJ v WCK (Supra)**.

**ANALYSIS AND DETERMINATION**

17. Having carefully considered the pleadings herein; the evidence adduced at trial and the submissions filed, I discern the following as the issues for determination-

1) What if any is the matrimonial property herein?

2) What is the respective share of the parties with regard to the matrimonial property?

3) Who should pay costs?

18. On the first issue, what comprises matrimonial property herein? It is common ground that the marriage between the two was solemnised under Kikuyu Custom in 1996 and was subsequently dissolved in November 2022

owing to irreconcilable differences. It is not disputed that the property reference **LR No. Nairobi Block/106/218** was acquired during the pendency of the marriage and that the parties established it as their matrimonial home.

19. Section 6 (1) of the Matrimonial Property Act defines Matrimonial property as-

**(1) For the purposes of this Act, matrimonial property means—**

**(a) the matrimonial home or homes;**

**(b) household goods and effects in the matrimonial home or homes; or**

**(c) any other immovable and movable property jointly owned and acquired during the subsistence of the marriage.**

Section 2 of the Act in turn defines Matrimonial home as-

**means 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;**

20. Notwithstanding that respondent had contended that there were other assets acquired in the pendency of the marriage, no evidence was adduced in support of this claim, in any event in her submissions she appears to have abandoned that trajectory and focused her claim on the property **LR No. Nairobi Block/106/218**.

21. On the first issue therefore, I find that property **LR No. Nairobi Block/ 106/218** and the household goods comprise the only matrimonial assets available for distribution between the parties.

22. The 2<sup>nd</sup> issue for determination is what is the respective share of the parties. As correctly enunciated by the parties at evidence and in their submissions, the law recognises both monetary and non-monetary contribution (Section 2 of the Act) and also of significance in a patriarchal society gives legal recognition of the uneven gender relations and power by providing at Section 14 of the Act as follows-

**14. Presumptions as to property acquired during marriage**

**Where matrimonial property is acquired during marriage—**

**(a)in the name of one spouse, there shall be a rebuttable presumption that the property is held in trust for the other spouse; and**

**(b)in the names of the spouses jointly, there shall be rebuttable presumption that their beneficial interests in the matrimonial property are equal.**

23. Whereas the law recognises both financial and non-financial contribution and takes cognizance of the fact that there is need to provide protection to the spouse whose interest is not captured on the documents of title the law is categorical that a spouse is entitled to a share of the asset that is commensurate with their contribution. Thus Section 7 of the Matrimonial Property Act states-

**7. Ownership of matrimonial property**

**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.**

24. As stated in **JWN v JGM [2025] KEHC 4803 (KLR)- [38] Ascertaining contribution of spouses is always a challenging assignment. The difficult task of determining the rights of parties in a marriage in division of their property in the absence of concrete proof of contribution is left to judicial discretion. There is no formula and the Court has to make an unscientific estimate of each spouse's contribution.**

**In the case of M A A v A R [2018] eKLR, Chitembwe, J. had this to say:**

**There is no formula for distribution of Matrimonial Property. What the court should consider is the contribution by the parties towards the property which is the subject of distribution. Where the financial contribution of each party is known, it becomes easy for the**

**court to distribute the property in line with Section 7 of the Matrimonial Property Act. However, where the contribution is non-monetary, the situation becomes difficult. The court has to estimate the efforts by the spouse who did not make any financial contribution and give it a value, either as a percentage or as a lump sum. The current situation is that the defendant equally did not make any financial contribution.**

25. In this case the respondent contends that she withdrew her savings and passed them on to the applicant as a contribution to the purchase of the property in question. There is no evidence of this transaction, no mention of the bank from which she withdrew the alleged amount and the date of the transaction. In the absence of a paper trail, I can only conclude that there is no evidence of financial or monetary contribution to acquisition of the property.

26. This leaves only the non- financial contribution. The respondent contends that she was the home maker. The applicant denies this and states that he contributed extensively to the running of the home and support for the children of the marriage. She has submitted evidence of short-term contracts to government and a 10-year contract as a trainer with Primatech Management Limited, with a consultancy fee of Kshs 10000 per day.
27. She did not deem it necessary to demonstrate proof of engagement since the signing of the Contract, but I take it that it is the reason for her absence from the home, an issue that appears to have irked the applicant. I am conscious that the jurisprudence leans towards protecting a partner who demonstrates industry viz a viz one who is *laissez -faire*.
28. No doubt when during the course of the marriage a party purchases a property and settles the family in the home the inference that can be made is that the intention is that the property is intended for the common benefit of all the family members. That is separate from the intention to confer proprietary interest. Beyond love and affection, the other

party's share in the property increases on proof of getting involved, getting their hands dirty and contributing to the advancement of the family. As has been established by judicial precedent each case is determined on its own merits, in **EMM v JWG [2024] KEHC 10390 (KLR)**, the Court stated,

**This case must be dealt with on the basis of its peculiar facts as enumerated by Court of Appeal in **TKM v SMW [2020] eKLR** where it is stated as follows:**

**...We bear in mind the edict in **Muthembwa v. Muthembwa (2002) 1 EA 186**, and many other decisions reminding the courts that in assessing the contribution of spouses in acquisition of matrimonial property, each case must be dealt with on the basis of its peculiar facts and circumstances but bearing in mind the principle of fairness...."**

**This court is bound by the Supreme Court holding in the case of **JOO v MBO (2023) KESC 4 (KLR)** held that;**

**the guiding principle in determining whether Article 45 (3) conferred proprietary rights is that apportionment and division of matrimonial property may only be done where parties fulfil**

**their obligation of proving what they are entitled to by way of contribution. The Court stated that, the status of the marriage does not solely entitle a spouse to a beneficial interest in the property registered in the name of the other, nor is the performance of domestic duties, or the fact that the wife was economical in spending on housekeeping. Therefore, a party must prove contribution to enable a Court to determine the percentage available to it at distribution. This safeguards a blanket expectation that the principle of equality will be applied generally in the division of matrimonial property, irrespective of contribution.**

29. Having considered the evidence that was tendered, especially the fact that the applicant bore the larger burden of running the home and he solely raised the finances to pay for the home, I find that the applicant's share in the matrimonial property which is the property **LR No. Nairobi Block / 106/218** and the household effects, to be 80 per cent.

30. Pursuant to Order 30 of the Matrimonial Property rules, I will make the following orders-

- 1) The property **LR No. Nairobi Block/106/218** along with the household effects therein comprises matrimonial property.
- 2) The shares of the parties to the matrimonial property are 80: 20 per cent in favour of the applicant.
- 3) The value of the property shall be assessed by a valuer jointly nominated by Counsel for the parties within 21 days from the date hereof.
- 4) In the event that the counsel are unable to agree on a valuer, Counsel for the applicant will nominate a valuer within 7 days of the expiry of the period under (3) above.
- 5) The valuer nominated under para (3) or (4) above will value the properties and submit report within 21 days of appointment.
- 6) The applicant will have the first option of buying out the respondent within 90 days of the report of the valuer.
- 7) In the event the applicant is unable to buy out the respondent, the properties shall be sold and net

proceeds shared in the ratio of 80:20 per cent in favour of the applicant.

8) The respondent will vacate the property **LR No. Nairobi Block/106/218** within 7 days of this judgment.

31. On account of the relationship between the parties, there shall be no order as to costs.

It is so ordered.

**DATED, SIGNED and DELIVERED ONLINE VIA MICROSOFT TEAMS at NAIROBI on this 23<sup>RD</sup> day of January, 2026.**

**P. M. NYAUNDI**

**JUDGE**

**In the presence of:**

Fardosa Court Assistant.

Ms. Okondo holding brief for Ms. Guserwa for Applicant.

Ms. Mukoma for Defendant.