



**VBN v MRN (Originating Summons E017 of 2023)
[2026] KEHC 583 (KLR) (Family) (23 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 583 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ORIGINATING SUMMONS E017 OF 2023
PM NYAUNDI, J
JANUARY 23, 2026**

BETWEEN

VBN APPLICANT

AND

MRN RESPONDENT

JUDGMENT

1. By Originating Summons dated 19th February 2023, presented under Order 39 of the Civil procedure Rules, Section 3A of the [Civil Procedure Act](#), Section 2, 6, 7, 9 and 14 of the [Matrimonial Property Act](#), Section 93(3) of the [Land Registration Act](#), the applicant seeks the following orders-
 - a. That an order does issue declaring that 50% or such other higher proportion of the properties listed below is for the beneficial interest of the applicant
 - i. A portion measuring approximately 1.4625 Ha forming part of Plot No. 14XXXX at Konza Ranching and Farming Cooperative Society Limited at Kima Estate
 - ii. House No. 7 situate on Flat No. C5 [Particulars Withheld] at South in Nairobi
 - iii. Property measuring approximately 6000 sq. ft situate in [Particulars Withheld] near Mtwapa Primary School.
 - b. That the division to separate the interest in the properties be done within 90 days from the date of the judgment at the respondent’s cost.
 - c. That the respondent be ordered to transfer the applicant’s share in the property to her within 60 days from the date of the division



- d. That in default, the registrar of this Honourable Court be authorised to sign any transfer documents in place of the respondent or any other person holding any title on behalf of the respondent to effect all the orders of this Court in favour of the applicant.
 - e. That an order does issue declaring the respondent is accountable to the applicant in respect of all income derived from the said properties.
 - f. That this Honourable court be pleased to order that the properties and the income from the same be settled in proportions aforesaid or as the court may order.
 - g. That the costs of the summons be provided for.
2. The summons is supported by the affidavits sworn on 19th February 2023 and 1st July 2023. The Respondent opposes the summons and has sworn a replying affidavit on 31st May 2023. The matter proceeded by viva voce evidence.

Summary of the Applicant's Case

3. The parties solemnised their marriage on the 17th July 2013 under the *Marriage Act*, Chapter 150 Laws of Kenya (now repealed). The marriage was blessed with 2 children. At the time of solemnising and throughout the pendency of the marriage both parties were gainfully employed, the applicant as a banker and the respondent as an engineer.
4. Soon after the marriage the respondent acquired a property via mortgage at South C, [Particulars Withheld], Flat No. C5, House No. 7 which the couple set up as the matrimonial home. The respondent serviced the mortgage loan while she paid the land rates and other miscellaneous expenses in relation to the property.

The couple opened a joint account at Cooperative Bank Mlolongo to manage family savings and developments.
5. Later in 2016, she contributed to the purchase of a parcel of land measuring 6000ft situated at [Particulars Withheld] near Mtwapa Primary. The total cost of the parcel of land was Kshs 640000. After a year she took a loan to contribute towards the construction of rental units on this parcel of land. She stated that a total of 26 single rental units were erected that fetch a rental income of Kshs 91,000 per month.
6. In April 2017 the Couple acquired a parcel of land measuring 1.4625, Plot No Agricultural Plot No. 14XXXX at Konza Ranching and Farming Society Limited at Kima Estate for a total consideration of Kshs 1,050,000. The family has been utilising the parcel of land for farming and grazing.
7. When the relationship between the two soured, the applicant left the matrimonial home and the respondent has since leased it out and is collecting a rental income of Kshs 60000. She urges that in computing the share she is entitled to the Court should factor in both her financial and non-financial contribution.
8. She averred that at all times during the pendency of the marriage she was working and therefore not dependent on the respondent as alleged. She had access to loans and in addition to the joint projects she took a loan to purchase her car.

Summary of the Respondent's Case

9. The respondent confirmed that the Couple was married and their marriage dissolved on 6th October 2022, following decree by the Oyugis Magistrate's Court. He denies that the property [Particulars



withheld] Apartments, Flat Number C5 House No.7 is matrimonial property as the same does not belong to him. It was only transferred to him by a gift deed of the employer in 2023, after the marriage was dissolved.

10. He presented his income tax returns to demonstrate that he lived in the house as a staff quarter. He denies having taken out a mortgage. He states he has contributed to maintain the children and therefore it is not true that he neglected the children.
11. He denies that the funds in the joint account in the Cooperative Bank Account were utilised for development and urges that the account was set up to meet the emergency needs of the family. He avers that the applicant made a single deposit of Kshs 970000 into the account and that he paid her back the money. He states that in a Children's matter between them the Plaintiff averred that she had taken a loan that the respondent ought to service.
12. They jointly purchased a motor vehicle, he later refunded the total amount that she had taken on his behalf towards the purchase of the car. He denies that she contributed to the purchase of the Mtwapa Land. Neither did she contribute to the construction of the rental units. He challenges the applicant's computation of rental income and states that there are 25 units and only 5 are in occupation.
13. He further denies that the applicant contributed in any way towards the purchase of the Konza property and he has solely financed the ongoing farming activities. He states that when the applicant left the matrimonial home she left with the household goods, which he had purchased.
14. He met his fair share of the house hold expenses, which included paying for the house help and meeting the educational and other needs of the children. He urges that he should be refunded a sum of Kshs 4,166,000, the sum comprises various expenses he met during the subsistence of the marriage.
15. At the close of the trial, only the applicant filed submissions as directed. Her submissions are dated 7th August 2025.

Summary of the Applicant's Submissions

16. She frames the following as the issues for determination-
 - a. Whether the properties listed hereinabove constitute matrimonial property.
 - b. Did the applicant herein contribute towards the acquisition of the said properties.
 - c. What is the entitlement by the respondent in the listed properties.
17. On the 1st issue it is submitted that the three assets, namely the [Particulars Withheld], the Mtwapa and Konza land, are matrimonial property having been acquired during the pendency of the marriage. Reference is made to the decision in EWM vs MOM; ANM & Anor 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.
18. It is further submitted while relying on the decision in GM v PMM [2024] KEHC 2546 (KLR) that the parties having lived at the [Particulars Withheld] the same comprises a matrimonial home and therefore matrimonial property.
19. It is further submitted that the Konza and Mtwapa properties were both acquired during the subsistence of the marriage and that therefore also comprise matrimonial property, reference is made to the Supreme Court decision in JOO vs. MBO; Federation of Women Lawyers (FIDA Kenya) & Another (Amicus Curiae) (Petition 11 of 2020) [2023] KESC 4 (KLR) (Family) (27 January 2023) (Judgment) on the Court's duty to factor in non-financial contributions.



Analysis and Determination

20. Having carefully considered the pleadings herein; the evidence adduced at trial and the submissions filed, I discern the following as the issues for determination-
- a. What if any is the matrimonial property herein?
 - b. What is the respective share (commensurate to financial and non- financial contribution) of the parties with regard to the matrimonial property
 - c. Who should pay costs?
21. On the first issue, what comprises matrimonial property herein? It is common ground that the parties were married between 2013 and 2022. It is not disputed that the parties set up a matrimonial home at the Parkview property and payments were made for the Konza and Mtwapa properties.
22. 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;
23. Central to the question whether or not the matrimonial home comprises matrimonial property is that both or one of the spouses must have acquired it. Although the applicant stated that the Parkview property was acquired by the respondent via mortgage, there is no evidence adduced to show that the respondent took out a mortgage to purchase the asset during the pendency of the marriage and further that he owns the asset.
24. The respondent contends that they stayed in the house as a benefit from his employer (staff quarters) and that ownership was transferred to him by a gift deed after the dissolution of the marriage and that the property is now owned jointly by him and his current spouse.
25. The [Matrimonial Property Act](#) is clear that the basis upon which any property may be available for distribution between former spouses is ownership. It is for this reason that Section 12 (3) of the Act sets out the protections available to a spouse in relation to a matrimonial home that is leased.
26. The other protections under Section 12 are available to a spouse where the other spouse has acquired an interest. The applicant has presented a rent collection agreement as proof of ownership by the respondent of the Parkview property. Section 26 of the [Land registration Act](#) provides that it is a certificate of title that comprises conclusive proof of ownership. The applicant suggests that the respondent having failed to avail evidence of ownership of the property by a person other than him, the Court should find that he owns the property.
27. That approach is not supported by the rules of evidence on burden of proof as set out in Sections 107 and 108 of the [Evidence Act](#)-



107. Burden of proof.
1. Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
 2. When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.
108. Incidence of burden.
- The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.
28. I find that the respondent has not discharged her duty to establish that during the pendency of the marriage the respondent acquired an interest in the [Particulars Withheld]. Notwithstanding that the family lived in the house, it is necessary to prove ownership and interest before it can be available for distribution as a matrimonial property.
29. The other property is the Konza property. As proof of ownership the applicant has availed a sale agreement executed by the seller, the respondent and the applicant in her capacity as ‘the wife to MRN’. Paragraph 11 of that agreement states that ‘after the signing of this agreement, the land will be at the discretion of the Buyer (MRN) and his wife VBN). The applicant submits that she obtained a loan to contribute to the purchase of this property. The framing of the agreement is indicative that this particular asset was purchased as a family asset. It is therefore matrimonial property.
30. The final property is that referred to as the Mtwapa property. There is an agreement of sale dated 6th June 2016. It is executed by the seller and the respondent. The applicant submits that she contributed to the purchase of the land and construction of rental units that were constructed thereon. She relies on the fact that the couple opened a joint account from which the payments were made. The respondent denies that the applicant contributed to the purchase or development and that in any case there is an ongoing court case and therefore ownership has not transferred to him.
31. He admits they had a joint account but states that it was for meeting the household expenses and emergencies. He states further that he paid off the loan that the applicant had taken. In any event he is entitled to a refund on the money he spent to run the household and support the applicant. He is the only one who has been carrying out farming activities on the parcel of land.
32. This asset was purchased during the pendency of the marriage. The applicant was in employment. There is evidence that the couple had a joint account. Although the respondent seeks to state that the account was for running the home and emergencies, no proof is submitted in this regard. It is evident that while the marriage subsisted the couple was engaged in joint enterprises. I do not think that in a marriage it is possible and desirable to maintain a shilling by shilling record of transactions within a marriage setting, especially assuming that most couples will not ordinarily plan in anticipation of the collapse of the union.
33. This is why the *matrimonial property Act* recognises indirect contribution. One spouse spending money on running the home means the other spouse has money available to invest in property and other family developments. The running of the home and the purchase of property are therefore considered joint endeavors and the spouse credited with indirect contribution towards the development of the assets. For these reasons, I find that the Konza Property also comprises matrimonial property.



34. Having clarified that only the Mtwapa Property and the Konza Property qualify as matrimonial property. The 2nd issue is the respective share of each of the parties.

35. Section 7 of the *Matrimonial Property Act* provides-

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.

36. The applicant seeks 50 per cent share of the matrimonial property. 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.

37. In this instance, I have taken into consideration that the couple had a joint account into which they both made deposits. The Supreme Court in its decision in JOO v MBO (2023) (Supra) underlined that in exercising its discretion the Court's objective is to achieve fairness-

(91) We are also aware that in the Malawian case of Kishindo v Kishindo [2015] MWHC 447, the High Court held that in distributing property between spouses upon the dissolution of a marriage, the court should consider the principle of fairness, justice, reasonableness, proportionality, comity, conformity and solidarity that will result in the property being equally divided between the husband and the wife. The court also discussed the concept of equality and fairness by holding that fairness depends on the circumstances of the case when it comes to disposal of property on dissolution of marriage while equality means that parties in a marriage are entitled to an equal share of the matrimonial property irrespective of the mode of acquisition. The court held: "There is no blue print of fairness that fits all. Fairness depends on circumstances on each case. One cannot successfully list all the circumstances. Consequently, decisions of this should be understood as not laying general or broad principles. Each decision is the courts' attempt to be fair in a particular situation..." Applying all these principles to this case, the correct order in the circumstances is that all property is up to be shared fairly subject to equality. Equality here implies that both husband and wife come on equal footing to property which, from the reasoning above, is jointly held between them and, in respect of the houses, irrespective of the motivation, the mode of acquisition or in whose name it is..." [Emphasis added]

38. With regards to the Mtwapa property, I note that the respondent does not deny that he continues to collect rent from the units constructed thereon notwithstanding the alleged court case. He is solely



benefitting from an asset that was acquired for their common benefit. He states that he paid off the loan the applicant took, but there is no evidence of this.

39. I find therefore that the applicant is entitled to 50 per cent share of the value of the 2 plots. The final orders that lend themselves pursuant to Rule 30 of the Matrimonial Property rules are-

- a. The parcel of land measuring approximately 1.4625 Ha and forming part of Plot No. 14XXXX at Konza Ranching and Farming Cooperative Society Limited at Kima Estate and the property measuring approximately 6000 sq. ft situate in [Particulars Withheld] near Mtwapa Primary School comprise matrimonial property.
- b. The parties are entitled to 50 per cent share (equal share) of the value of the matrimonial property
- c. 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.
- d. 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.
- e. The valuer nominated under para (3) or (4) above will value the properties and submit report within 21 days of appointment
- f. The respondent will have the first option of buying out the applicant within 90 days of the report of the valuer.
- g. In the event the respondent is unable to buy out the applicant, the properties shall be sold and net proceeds shared equally between the parties

40. 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 23RD DAY OF JANUARY, 2026.

P. M. NYAUNDI

JUDGE

In the presence of:

Fardosa Court Assistant.

Ochoki for Applicant.

