



**LWK v NWW (Being the legal representative of the Estate of JKT) (Originating Summons 39 of 2012) [2026] KEHC 1935 (KLR) (Family) (20 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 1935 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**  
**FAMILY**  
**ORIGINATING SUMMONS 39 OF 2012**  
**PM NYAUNDI, J**  
**FEBRUARY 20, 2026**  
**IN THE MATTER OF DIVISION OF MATRIMONIAL PROPERTY**  
**AND**  
**IN THE MATTER OF SECTION 17 OF THE MARRIED WOMEN’S PROPERTY ACT, 1882**

**BETWEEN**

**LWK ..... PLAINTIFF**

**AND**

**NWW (BEING THE LEGAL REPRESENTATIVE OF THE ESTATE OF JKT) ..... DEFENDANT**

**JUDGMENT**

1. By Originating Summons dated 20<sup>th</sup> June 2012, the Plaintiff seeks a declaration that the movable and immovable properties acquired through the joint efforts of the Plaintiff and Defendant during their marriage and registered in the names and possession of the Defendant/other persons on his behalf are owned jointly by the Plaintiff and Defendant. She also seeks a declaration that the properties are held in trust by the Defendant/ other person for the benefit of the Plaintiff in the ratio 50:50.
2. It is her prayer that once their respective shares are determined either spouse be given the first option to buy out the other or that the properties be sold and the proceeds shared in accordance with their respective shares
3. The Properties include:
  - i. Title number LOC.16/Ndakaini/xxx measuring 0.588ha
  - ii. Title number LOC. 16/Ndakaini/xxx



- iii. Title number Nairobi/Block 111/xxxx measuring 0.0138ha
  - iv. Title number KJD/Kitengela/xxxx measuring 1.9ha
  - v. Title number L.R 13136/xxx Juja
  - vi. L.R number 8469/x
  - vii. Plot number xxx/Majengo "A"
  - viii. Zimmerman Plot No. xxx
  - ix. Isuzu Tougher Pick-up registration number KAH xxxC
  - x. Motor vehicle Peugeot 405 Salon Exxx XET (which was later registered as KAJ xxxC)
  - xi. Peugeot 405 Salon Hxxx WWU (which was later registered as KAG xxxU)
  - xii. Toyota Hiace KAU xxxM
4. The application is supported by affidavit sworn by the plaintiff in which she contends that she was married to the defendant, the marriage has broken down and there is a pending divorce cause before Court.
  5. For the duration of the marriage she was either in gainful employment or ran business and she contributed to the acquisition and development of the properties and also made an indirect contribution by running the home and taking care of the children alongside other duties and responsibility that she took up as the wife and mother of the home.
  6. Among the business she ran were a pharmacy and milk distributorship business; (Express dairy and KCC Milk). The Defendant always took charge of the purchase of properties bought as a couple and registered them in his name (and retained title deeds/documents). She worked throughout the subsistence of their marriage contributing directly and indirectly to the purchase of the properties.
  7. One of the significant contributions she made was to resign from her teaching career and join the defendant in England where he was pursuing further studies. According to her the deceased was depressed at the time following the death of his mum. That she supported him and he was able to finalise his PhD.
  8. She contributed to running the home and paid the children's tuition and took on other household expenses. The defendant frustrated some of her projects, for instance he stymied her furniture business by carrying away the furniture she had bought.
  9. The Defendant has sworn an affidavit on 11<sup>th</sup> October 2012 in opposition. Stating the marriage was effectively dissolved on the issuance of decree absolute on 18 June 2010.
  10. The plaintiff had filed a suit in the children's court seeking to compel him to provide for the children, that claim was dismissed as the Court found that he was maintaining the children. His mother acquired the land the plaintiff was claiming. He diligently provided for the family, any money the plaintiff had advanced him, he had refunded. She was not entitled to property acquired prior to the marriage in 1988 as they were not married then.
  11. The defendant was adamant that he contributed solely to the acquisition and development of the properties. The defendant submits that the plaintiff acquired properties during the pendency of the marriage which properties she has not disclosed.



12. The properties subject to the proceedings herein are enumerated here below, with a summary of each parties claim to it or a share of it specified.



Property	Plaintiff's Position	Defendant's Position	
1. Title number LOC.16/Ndakaini/xxx measuring 0.588ha	- Jointly acquired in 1989 and paid in instalments but registered in the name of the Defendant's mother who is deceased. - Direct contribution included: borrowing Kshs. 35,000 through a loan in Jan 1989 to enable purchase; borrowed Kshs.7000 from a friend to pay an instalment as loan had delayed; planted tea in 1993 that has provided income that's taken care of the family.	- Belonged to the Defendant's late mother who purchased it when she was gainfully employed and cannot be subject of these proceedings.	
2. Title number Nairobi/Block 111/xxxx measuring 0.0138ha	- Jointly acquired in 1990; is matrimonial home (moved into home in 1991). - Direct contribution: kshs. 60,000 for down payment (this was part of money from loan gotten in Feb 1989); borrowed kshs.60,000 for renovations; settled mortgage of kshs.396,300 from sale of household goods, clothes, car and savings in bank account.	- House belongs to Defendant paid through check-off (matrimonial home and family has been living there) - Purchased through a mortgage of kshs.372,000 from HFCK for which Defendant was to pay deposit of kshs.60,000 and monthly instalments of kshs.6,082 deducted directly from his salary from 1 <sup>st</sup> November 1990 to September 1993. - Plaintiff did not contribute kshs.60,000 as alleged. Defendant purchased house in 1990 (contradicting Plaintiff's assertion that she took a loan in Feb 1989). - Loan referred to was used by Plaintiff to purchase 2 and a half acres at Ng'onde Farmer's Coop. Defendant gave Plaintiff kshs.20,000 to top up purchase price of kshs.50,000 - To facilitate purchase of property, Plaintiff sold Defendant's pick-up for kshs.550,000 as well as household goods and remaining funds were used to pay for air ticket.	
3. Title number KJD/Kitengela/xxxx measuring 1.9ha	- Purchased in 1998 and registered in Defendant's name. Defendant traded	- Property registered in Defendant's name and held in trust for a group of 5 friends in equal shares. (Defendant's share is 1/5) - Property had been a gift to the Defendant	



	motor vehicle Peugeot KAJ xxxC in exchange for parcel.	from Mr. Carlos Nakuo (Defendant's former student) and Defendant insisted on paying him kshs.150,000 which he sourced from his friends as above.
4. Title number L.R. 13136/xxx Juja	- Purchased in 1998. Direct contribution: kshs.50,000 to settle outstanding balance.	- Property bought through check-off vide the University Estate which later became KU Boma Housing Coop. Requested Plaintiff for a loan which Defendant paid back (Plaintiff used repayment to open café at Mutindwa in Umoja)
5. L.R number 8469/x	- Purchased in 1984 (1 <sup>st</sup> property purchased in Nairobi) - Indirect contribution- used stipend for family upkeep to enable Defendant to save money to purchase property.	- Defendant bought plot while Plaintiff was still in University and were unmarried.
6. Plot number xxx/ Majengo "A"	- Plaintiff does not explain claim on this property.	- Allotted to Defendant's mother while Defendant was still in Primary/High School. Initial buildings built in 1975 by Defendant's mother (Defendant dug pit latrine himself)
7. Zimmerman Plot No. xxx	- Purchased in 1986, sale agreement signed by Defendant and the seller. Direct contribution made: borrowed a loan of kshs.15,530 towards purchase; made payment to seller through a standing order from National bank account for 15 months.	- Defendant invited to buy property by friend with whom he had decided to form an investment group with others. - Defendant invited group to purchase property jointly. - Plaintiff agreed to be remitter of money, but Defendant and other group members paid her back. - Property in Defendant's name to simplify transaction with seller, however, defendant only claims 1/6 of the property.
8. Isuzu Tougher Pick-up registration number KAH xxxC	- Jointly purchased in 1998 but registered in Defendant's name. (purchased to transport pig feed). - Direct contribution during purchase	- Defendant bought vehicle to cater for his pigs vide sale agreement dated 24 February 2003. - Plaintiff paid nothing. - Son destroyed car, Defendant sold it off as scrap for kshs.70,000 and gave proceeds to daughter to purchase computer.



	gotten from income from business; and gave Defendant kshs.135,000 every Saturday to purchase pig feed.	
9. Motor vehicle Peugeot 405 Salon Exxx XET (which was later registered as KAJ xxxC)	- Jointly purchased while in the UK. - Contributed directly to purchase.	- Plaintiff sold off Defendant's house hold goods that he had during his bachelorhood, a pick-up and the Defendant's savings to purchase car. - Plaintiff contributed nothing to purchase.
10. Peugeot 405 Salon Hxxx WWU (which was later registered as KAG xxxU)	- Solely purchased by Plaintiff while in the UK (imported to Kenya on agreement with Defendant that she will sell the car and start a business and buy a pick-up) - After write off, Defendant received kshs.450,000 compensation from insurance - Direct contribution- collecting scrap of vehicle; using kshs.180,000 to repair vehicle until it was up and running.	- Defendant bought car before coming back to Kenya in 1995 - Plaintiff contributed nothing. - Car became a wreck and was of no value thus left in a yard.
11. Toyota Hiace KAU xxxM	- Plaintiff does not explain claim on this property.	- Defendant used his salary to buy car with other people to start a tour company - Plaintiff contributed nothing - Company not started as vehicle not fit for purpose so car was sold and proceeds shared among the group members. Money from sale used by Defendant to buy items and balance used in supporting the family.

13. The matter proceeded by viva voce evidence. The Plaintiff testified as the sole witness for her case. She reiterated the averments in her affidavit and witness statement. Prior to the solemnisation of the marriage she cohabited with the deceased. She was a student at the time, he was a tutorial fellow. She moved in to stay with him after the defendant visited her home on two occasions. They had two children prior to the solemnisation of the marriage in 1988. She took care of the children as he worked and pursued both his postgraduate degrees culminating in the Doctorate. There are minutes of visit at her parents' home by the defendant and his relatives which she states was the solemnisation of the marriage under Kikuyu customary law.



14. She was in the UK with the Children from 1993 to 1995. She worked while there and her earnings augmented his stipend. They separated in 2006, he locked her out of the home at Komarock. She contributed towards purchase of land on which the mother of the defendant was eventually settled.
15. On occasion she took loans and deductions were made to her salary. She withdrew money from her account to settle mortgage prior to travelling to the UK. The properties she claims were acquired after 1983. While in the UK they purchased motor vehicles that she returned home with.
16. She denies being refunded by the defendant. The money he earned was not sufficient to acquire all the properties.
17. The defendant also testified as sole witness, He states that the marriage was in existence between 1988 and 2010. They first lived at Zimmerman. He contributed towards the purchase of a property at Ngundu. The property was registered in the name of the plaintiff.
18. With regards to the Komarock house, he took out a mortgage instalment deducted from payslip. He had a pick up at the time She sold the household goods and the pick up to enable her travel to the UK in 1993. She worked hard in the UK but she did not apply her earnings to the family. On return from UK they settled at Komarock. He denied that the plaintiff contributed to the purchase of the properties registered in his mother's name and to the tea that was planted on the farm.
19. He concedes that they commenced cohabitation in 1983. He denies that the visits to her home and ceremonies amounted to formalising a marriage under Kikuyu custom. The 1<sup>st</sup> 2 children are named in accordance with Kikuyu custom. He maintained the children as she was not working at the time. After the death of his mother he receives he income from the tree bushes.
20. At the conclusion of the hearing both parties filed submissions

#### **Summary of the Plaintiff's Submissions.**

21. The Plaintiffs submission are dated 8<sup>th</sup> September 2025. She submits that all the properties enumerated in her Originating Summons comprise matrimonial property. She urges the court to consider both her financial and non-financial contribution, alongside her direct and indirect contribution.
22. She relies on the following authorities; Federation of Women Lawyers Kenya (FIDA) v Attorney General & Another [2018] KEHC 7130 (KLR) and urges that Court ensure that each party gets a share based on their contribution. JOO v MBO; Federation of Women Lawyers (FIDA Kenya) & Another (Amicus Curiae) [2023] KESC 4 (KLR) for the submission that both direct and indirect contribution should be considered in determining the respective shares. With details in the cited English Decisions in Burns v Burns [1984] 1 ALLER 244 and White v White [2001] 1AC 596. She also relies on the decision in HWR v PRK (2016) eKLR for submission that the Court ought to find that the property ought to be shared equally between the two.
23. The Plaintiff proposes that the assets be distributed as follows-

##### Estate of the Defendant

- i. L.R 13136/xxx Juja
- ii. Zimmerman Plot Number xxx
- iii. LOC 16/Ndakaini/xxx
- iv. Kajiado Town Plot xxx/Majengo "A"



- v. LR 8469/4 Kasarani Mwiki
- vi. Isuzu Tougher Pick-Up registration number KAAH 934C
- vii. Toyota Hiace registration number KAU xxxM
- viii. Peugeot 405 Saloon Car KAG xxxU
- ix. Peugeot 405 Saloon Car KAJ xxxC

To the Plaintiff

- i. Nairobi/Block 111/xxxx (0.0138 Ha)
  - ii. KJD/Kitengela xxxx (1.9 Ha)
  - iii. LOC 16/Ndakaini/xxx (0.588 Ha)
24. On costs she submits on the authority of *Owiti & Another v Keith Interiors Limited* (Commercial Appeal EO58 of 2021) [2024] KEHC 17077 (KLR) that the defendant should bear the costs of the suit.

### **Summary of the Defendant's Submissions**

25. The Defendant's submissions are dated 26<sup>th</sup> October 2025. He identifies the issue for determination to be

### **Whether the properties listed by the Plaintiff qualify as matrimonial properties, if so whether they should be subject to equal distribution between the parties.**

26. Reference is made to the decision in *Federation of Women Lawyers (FIDA) vs AG* [2018] eKLR and *UMM vs IMM* [2014] a party only entitled to their contribution. This was further clarified on *JOO v MBO* (Supra) and *EGM vs BMM* [2020] eKLR.
27. Reference is made to the decision in *LWG V GGW* [2025] KEHC 3188 (KLR) for the assertion that for the claimant to acquire an interest in his inheritance from his mother she had to demonstrate that she had contributed to its development. On costs he submits that the Plaintiff should meet the costs.
28. Unfortunately, the deceased died before the conclusion of this case, the administrator of his estate proposes that the properties be distributed as hereunder-
- a. Matrimonial property- Nairobi/Block 111/xxxx measuring 0.0138ha
  - b. Plaintiff:1/6 of Zimmerman Plot No. xxx3/5 Ngondu plot No. xxx Property (2 ½ ha)
  - c. Estate of Defendant:1/6 of Zimmerman Plot No. xxx2/5 Ngondu plot No. xxx Property (2 ½ ha) Title number L.R 13136/xxx Juja Plot number xxx/Majengo "A" L.R number 8469/4 Title number KJD/Kitengela/xxxx (1.9ha)
  - d. Estate of the late Joyce Waruguru Thiong'o (Defendant's mother) Title number LOC.16/Ndakaini/xxx (0.588ha) Title number LOC. 16/Ndakaini/xxx

### **Analysis and Determination**

29. Having considered the pleadings, evidence on record, submissions and relevant law I frame the following as the issues for determination



- a. Which of the properties comprise matrimonial property?
  - b. What is the respective share of the parties?
  - c. What if any are the consequential orders arising from (a) and (b) above?
30. The Originating Summons is presented under Section 17 of the Married Women's Property Act, 1882 (now repealed) which states (relevant

**In any question between husband and wife possession of property, either party ..... may or otherwise in a summary way to any judge of Justice ..... and the judge of the High Court orders with respect to the property in disputes and consequent on the application as he thinks**

- parts)-
31. The application and interpretation of the above statute has been the subject of numerous court decisions including in *Nyakeya v Nyamweya* [2025] KECA 20 (KLR) where the Court stated
- (36) The trajectory in the afore cited decisions, is that in order for the court to distribute matrimonial property under Section 17 of MWPA, the court must be satisfied that the property was acquired during the subsistence of the marriage through the joint efforts of the parties; and in order to determine the respective shares, the court must consider evidence regarding the earning of the respective spouses, the direct or indirect contribution of each spouse towards the family welfare, and the acquisition of the matrimonial property, each case being dependant on its own peculiar circumstances.
32. The first question for determination is therefore what is the period within which the parties were married. The defendant contends that the parties were married between 1988 (as per marriage certificate) and the marriage was dissolved on 27<sup>th</sup> October 2010 as per certificate of making decree nisi absolute. The plaintiff on her part submits that the marriage was first commenced by way of cohabitation, followed by formalisation under Kikuyu custom and subsequent registration under the African Christian Marriage and Divorce Act (now repealed) on 30<sup>th</sup> July 1988.
33. The plaintiff submits prior to the visit by the defendant as detailed in minutes dated 23<sup>rd</sup> April 1983 and 30<sup>th</sup> April 1983 she was pregnant with their first child who was born on 6<sup>th</sup> June 1983. The English translation of the minutes reads '1<sup>st</sup> Dowry Negotiations between Karanja s/o Thiongo and Lucy Wangari Muchiri Held on Saturday the 23<sup>rd</sup> April the year 1983'. The subsequent minutes are headed '2<sup>nd</sup> Negotiation day held on Saturday the 30<sup>th</sup> April, 1983 at Tiras Muchiri Kiiru (i.e. Wangari's Parents Home) as agreed on 23<sup>rd</sup> April 1983'.
34. I have read the minutes it is clear that the agenda of the meeting was discussing payment of dowry, agreement was reached and the defendant did make a payment. Paragraph 1 of the minutes of 23<sup>rd</sup> April 1983 are clear- 'Lucy Wangari Muchiri and Karanja s/o of Thiongo have agreed to get married'.
35. There is no doubt that by 30<sup>th</sup> April 1983 the Couple held themselves out as a married couple and this was expressed by their action to participate in dowry negotiations and part payment of the dowry.
36. I find therefore that the marriage between the plaintiff and the defendant subsisted between April 1983 and October 2010.



37. For property to comprise matrimonial property under Section 17 of the MWPA, 1882, it is necessary that the same be acquired by both or one of the parties and secondly that the acquisition was during the pendency of the marriage. The Plaintiff submits that the following assets comprise matrimonial property.

- i. Title number LOC.16/Ndakaini/xxx measuring 0.588ha title issued in the name of Joyce Waruguru Thiongo (deceased) mother of the defendant on 6<sup>th</sup> December 1990. It is the plaintiff's case that the same comprises matrimonial property as she and the defendant paid for the property and registered it in the name of the deceased's mother, but all along it was their intention that the property was theirs. The defendant denies this and states that his mother obtained the property, she was employed and had the means.

As stated the requirement is that the property ought to have been 'acquired'. It is necessary that ownership ought to have passed to the defendant for this asset to be considered matrimonial property. Both the certificate of Title and certificate of official search show that at the time the Originating Summons was filed the property was registered in the name of the deceased's mother (also deceased). In the circumstances her claim would be against the Estate of Joyce Waruguru Thiongo and not the defendant. I therefore find that the property does not comprise matrimonial property as the interest of the defendant, if any, has not crystallised.

- ii. Title number LOC. 16/Ndakaini/xxx  
By parity of reasoning with regards to the property Title number LOC.16/Ndakaini/xxx measuring 0.588ha this property is not matrimonial property.

- iii. Title number Nairobi/Block 111/xxxx measuring 0.0138ha  
This is the property also referred to as the Komarock home it is not in dispute that it was the matrimonial home. The property is registered in the name of the defendant and title issued on 30<sup>th</sup> August 1993 during the subsistence of the marriage. It is therefore matrimonial property.

- iv. Title number KJD/Kitengela/xxxx measuring 1.9ha  
The property is registered in the name of the defendant and title issued on 11<sup>th</sup> December 1998 during the subsistence of the marriage. It is therefore matrimonial property.

- v. Title number L.R 13136/xxx Juja  
This is the parcel of land on which the defendant resides with his family subsequent to the divorce with the plaintiff. It is not disputed that it was acquired during the subsistence of the marriage. It comprises matrimonial property.

- vi. L.R number 8469/4  
The plot allocation certificate in respect to the parcel of land shows it was acquired on 3<sup>rd</sup> May 1984. This was during the subsistence of the marriage it therefore it comprises matrimonial property.

- vii. Plot number xxx/Majengo "A"  
this property was acquired from the deceased mother of the defendant, transfer was made to the defendant on 17<sup>th</sup> May 2000. This was during the pendency of the marriage. It will therefore fall for consideration as matrimonial property.

- viii. Zimmerman Plot No. xxx



It is admitted that the property was acquired during the pendency of the marriage. It is therefore matrimonial property. The plaintiff has attached sale agreement dated 2<sup>nd</sup> November 1986, showing purchase of property by the defendant from Mbuthia Gakii.

- ix. Isuzu Tougher Pick-up registration number KAH xxxC

There is a log book that shows the motor vehicle was last in the name of the defendant as at 6<sup>th</sup> December 2001. The car was sold and the defendant contends proceeds applied to the benefit of the family. This is not controverted. There is nothing available to distribute.

- x. Motor vehicle Peugeot 405 Salon Exxx XET (which was later registered as KAJ xxxC)

It is not disputed that this vehicle was purchased during the pendency of the marriage. Although it qualifies to be considered as matrimonial property it is not currently serviceable. There is no evidence to the contrary. No purpose will be served as the Court should only distribute properties that have value.

- xi. Peugeot 405 Salon Hxxx WWU (which was later registered as KAG xxxU)

It is not disputed that this vehicle was purchased during the pendency of the marriage. It is submitted it is no longer serviceable, this is not controverted.

- xii. Toyota Hiace KAU xxxM

It is not disputed that this vehicle was purchased during the pendency of the marriage. It was acquired during the pendency of the marriage but the defendants account of its disposal not controverted

38. In addition to the above listed properties the defendant submitted that there is an additional property Ngondu measuring 2 ½ acres that was acquired by the parties in 1989 and that the same should be considered matrimonial property. No title of ownership is availed to confirm its existence or the ownership by the plaintiff. What has been availed are photographs, a photograph cannot comprise proof of ownership. I therefore find that that it has not been proved that the property exists and that it comprises matrimonial property.

39. From the foregoing analysis I find that the following assets are matrimonial properties as defined under Section 17 of the Married Women's Property Act, 1882-

- i. Title number Nairobi/Block 111/xxxx measuring 0.0138ha
- ii. Title number KJD/Kitengela/xxxx measuring 1.9ha
- iii. Title number L.R 13136/xxx Juja
- iv. L.R number 8469/4
- v. Plot number xxx/Majengo "A"
- vi. Zimmerman Plot No. xxx

40. The 2<sup>nd</sup> issue for determination is the respective share of the parties. The Supreme Court in JOO vs MBO (supra) whilst confirming that the decision in Peter Mburu Echaria V Priscilla Njeri Echaria [2007] KECA 504 (KLR) is good law, emphasised that a spouse does not acquire any beneficial interest in matrimonial property by fact of being married only and that specific contribution had to be ascertained to entitle such a spouse to a specified in the share.



41. In determining the respective shares of the parties herein I am well guided by the holding of the Supreme Court in *JOO v MBO* (Supra) where it clarified that Article 45(3) was not designed for the purpose of passing property rights from one spouse to another by the fact of marriage only. The Constitutional provision underscores the importance of applying a substantive equality lens in any inquiry as to the contribution of parties to acquisition and development. The court should be deliberate not to cloud its assessment with regard to the stereotypical roles assigned to either gender and the traditional value assigned to those roles, this is the thrust of the guidance in the English decision in the case of *White v White* (Supra).
42. With that guidance, I find as follows-
- a. Title number Nairobi/Block 111/xxxx measuring 0.0138ha This was established as the matrimonial home during the marriage. The defendant contends that he serviced a mortgage and indeed prior to her departure the plaintiff sold family assets to offset the mortgage. She has submitted documentation to show she made a direct payment and further she made indirect contributions, including meeting household expenses and providing companionship. The defendant relied on the judgment in *Children's Case No. 459 of 2000* as evidence that he contributed to the care of the children and the companionship was mutual. It is not denied that the plaintiff was in gainful employment during the pendency of the marriage and also engaged in business to supplement the family income. I find that her contribution towards the acquisition of this asset is 50%.
- The defendant conceded that he has been collecting rent since 2006 when the plaintiff left the home. She is entitled to 50 per cent of the rental income from 2006 to the date of this judgment.
- b. Title number KJD/Kitengela/xxxx measuring 1.9ha
- The defendant submits that the property was a gift from a friend. That he however paid for it and secured a loan of Kshs 150000 from his friends. The plaintiff submits that the property was procured on the exchange with motor vehicle KAJ 126 C, which was bought while they were in the UK. That she contributed towards the purchase. There is no evidence of this transaction. I however find that the plaintiff has not proved to the required standard her contribution to the acquisition of this property.
- c. Title number L.R 13136/xxx Juja
- The defendant has availed communication from Kenyatta Boma Housing Cooperative Society Limited confirming he had paid a total of Kshs 624, 283.25 towards the purchase of the property. The plaintiff asserts she paid Kshs 50000 to clear the outstanding balance. The defendant claimed that he refunded the sum but there is no evidence of the refund. Considering the indirect contribution by the plaintiff comprising supplementing the family income and contributing to the running of the home, I would find the contribution of the plaintiff to amount to 20%
- d. L.R number 8469/4
- The plaintiff's claim to the property is her indirect contribution. The marriage had just been formalised she was a young mother likely and taking full time care of the child. It was the first property acquired during the pendency of the marriage. The plaintiff has availed receipts showing payments on 3<sup>rd</sup> May 1984, 9<sup>th</sup> July 1983 and 26<sup>th</sup> April 1984. I am not persuaded that the plaintiff contributed towards its acquisition that would entitle her to a share. It is also



one of the properties that in her submission she concedes should go wholly to the estate of the defendant.

- e. Plot number xxx/Majengo "A"

This property originally belonged to the mother of the deceased and the Town Council of Kajiado transmitted it to the defendant. The plaintiff does not claim to have contributed to its acquisition or development. There is therefore no evidence demonstrating contribution, that would entitle her to a share.

- f. Zimmerman Plot No. xxx

The plaintiff was able to demonstrate that she made a total contribution of Kshs 15000 towards the purchase of this property. The defendant asserts that he is only entitled to a 1/6<sup>th</sup> of the property which he surrenders to her. In the circumstances, I will find that the plaintiff will have 100 per cent of this property.

42. In the end therefore, the matrimonial property that the plaintiff will have a share in are –

- a. Zimmerman Plot No. xxx share 100 per cent  
b. Title number L.R 13136/xxx Juja share 20 per cent  
c. Title number Nairobi/Block 111/xxxx share 50 per cent

43. What then are the consequential orders

- a. The Counsel for the estate and the Plaintiff will nominate a valuer to value the properties listed under paragraph 42 above within 21 days from the date hereof  
b. In the event they are unable to agree on a valuer, the plaintiff will nominate a valuer within 14 days of the failure  
c. The valuer so nominated will provide a valuation report within 30 days of appointment.  
d. The Administrator of the estate of the deceased defendant shall have the first right to buy out the Plaintiff in both the properties under 42(b) and (c) within 120 days of the valuation report.  
e. Failing which the properties shall be sold and the proceeds sold in the stated proportions. The amount payable to the plaintiff will include 50 per cent of rental income from 2006 when she left the home to date of this judgment  
f. The parties are required to execute documents to facilitate transfer of the property within 14 days of delivery, failing which the Deputy Registrar will execute the documents on their behalf.

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

45. Parties are at liberty to exercise their right of appeal within 30 days

It is so ordered

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT Nairobi THIS 20<sup>TH</sup> DAY OF FEBRUARY, 2026.**

**M NYAUNDI**

**JUDGE**

In the presence of:



Fardosa Court Assistant

Anne Mbugua for Plaintiff

Mr. Kimanzi holding brief Kihara for Defendant

