



**JMW v LWK (Matrimonial Cause 3 of 2017)
[2026] KEHC 2207 (KLR) (23 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 2207 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MATRIMONIAL CAUSE 3 OF 2017
SM MOHOCHI, J
FEBRUARY 23, 2026**

BETWEEN

JMW PLAINTIFF

AND

LWK DEFENDANT

JUDGMENT

1. Before Court for determination is an Application by way of Originating Summons dated 24th November, 2014 by the Plaintiff wherein, he seeks the following prayers:
 - i. A declaration that the parcel of land known as
 - a. Bahati/Kabatini Block 1/XXXX
 - b. Nyandarwa/Silibwet/XXXX
 - c. Nyandarwa/Silibwet/XXXX
 - d. Nyandarwa/Silibwet/XXXX
 - e. Nyandarwa/Silibwet/XXXX
 - f. Plot No. XXXX Core Housing Site & Services Purchase Scheme
 - g. Plot No. XXXX Co-Site Nyahururu Municipality,
 - h. Sipili Donyoloip Block 2/XXXX (Mutukanio)
 - i. Title number IR XXXX

Are properties in the course of coverture arising from the matrimonial union between the Plaintiff and the Defendant



- ii. A declaration that the parcel of land known as NRB/Umoja XXXX was developed in the Course of coverture arising from the matrimonial union between the Plaintiff and Defendant
 - iii. A declaration that in spite of some of the properties being registered in the name of either the Plaintiff or the Defendant, that the person in whom the property is registered holds the properties in trust for and on behalf of the other spouse and or as the custodial fiduciary for and on behalf of the other spouse
 - iv. An order that the properties herein be shared in such proportion equivalent to each party's contribution both in non-monetary and monetary terms
 - v. An order that all rental income from the properties known as NRB/Umoja XXXX and Bahati Kabatini be shared in such proportion equivalent to each party's contribution both in monetary and non-monetary terms
2. The grounds in support of the Originating Summons are found on the face of the Application and in the Supporting Affidavit sworn by the Applicant on the same date. The Applicant states that during pendency of the marriage, the properties in issue were acquired, developed, improved and maintained by joint efforts with substantial efforts from the part of the Plaintiff apart from NRB/Umoja XXXX which was purchased prior to their union but was developed between 2012 and 2013.
 3. The Defendant opposed the summons by way of Replying Affidavit sworn on 8th April, 2015. She averred that she was financially stable prior to meeting the Plaintiff as she was a professional athlete having taken part in various races. That during the period they were living together, she entrusted the Plaintiff with her finances giving him full access to her bank cards but he would withdraw monies in his bank accounts and deposit in his bank accounts. She averred that she entrusted the Plaintiff with his price monies which were usually in foreign currency, where he would exchange and deposit large sums into his bank accounts and utilize to make purchases of various properties.
 4. Both parties filed their respective list of documents in support of their assertions. The matter thereafter proceeded to full hearing with each side presenting oral testimony. At the conclusion of the hearing the Court directed the parties to file and at concluding the court directed filing of written submissions.

Plaintiff's Submissions

5. The Plaintiff submits that he was financially stable at the time of meeting the Defendant. In particular, it is submitted that in 2008 alone, he received from his police salary about Kshs 112,556.80 and deposited an additional amount of Kshs. 2,130,000 into his Equity account No. XXXX.
6. To further demonstrate that he was not financially destitute, he submits that he acquired several properties between the years 2005-2009 prior to his meet with the Defendant which are; Nyandarua/Ol Kalou Central/XXXX, Motor vehicle registration numbers XXXX XXXX, KBW XXXX, KAJ XXXX and KBU XXXX, Nyandarua/Ol Kalou Central/XXXX and Plot XX Site & Services Phase II.
7. Regarding the Properties listed in the Summons, the Plaintiff explains their acquisition as follows;
 - a. The Plaintiff purchased LR No. XXXX (Free Area) following the sale of Nyandarua/Ol Kalou Central/2168 and the sale of trees from his Nyandarua/Ol Kalou Central/XXXX. It is contended that the improvements on this property were from proceeds borrowed from Tower Sacco.



- b. LR XXXX Cosite Nyahururu Municipality was bought from the proceeds of the sale of KBW XXXX and not from the proceeds of the London marathon which took place after the purchase
 - c. XXXX Core Housing Site and Service and Nyandarwa/Silibwet/XXXX were purchased by the Plaintiff after selling Nyandarua/Ol Kalou Central/3296
 - d. Embakasi ranching/block/105/5670 was purchased before the marriage
 - e. Bahati/Kabatini Block 1/XXXX the Plaintiff bought the property where he contributed 1.8 million with the Defendant contributing 2 million
 - f. Sipili Donyoloip Block 2/XXXX (Mutukanio) the Plaintiff purchased it after withdrawing his savings from the Police Sacco
 - g. Nyandarwa/Silibwet/2074/XXXX/XXXX/XXXX and XXXX
 - h. Nyandarwa/Silibwet/6651 which is the same as Nyandarwa/Silibwet/XXXX after new numbers were issued was bought by the Plaintiff following the sale of Plot XX Site & Services Phase II which had been purchased prior to their union
 - i. Nyandarwa/Silibwet/XXXX Plaintiff bought it by sending money to the Defendant who bought it the same day from proceeds he had received following the sale of motor vehicle registration number KBU XXXX
 - j. Nyandarwa/Silibwet/XXXX/XXXX were sold in agreement with the Defendant to construct LR. XXXX9 (Nakuru Free Area)
8. On NRB/Umoja XXXX the Plaintiff argues that although the property was purchased prior to the union, he contributed both financially and non-financially toward the facelifting and building the 4th and 5th floors. He disputed claims that the 4th and 5th floors were purchased following the wins from the Dubai Marathon
 9. It is submitted that non-monetary contributions were in the nature of the Plaintiff's tutelage and coaching that enabled her win the marathon and oversaw the completion of the building.
 10. Monetary contributions were in the nature of sending monies for construction, monies that he received from his first wife and from sale of trees from his firm that he co-owns with his 1st wife, sale of Nyandarua/Ol-Kalou/Central/XXXX/XXXX his non-monetary contribution was in the form of taking the Defendant to see a doctor for a tendon injury which ensured she could not run for a couple of years and other forms of support in her athletic career
 11. Reliance was placed in the case of TKM v SMW [2020] eKLR to argue that he was the one who contributed financially to the acquisition of the matrimonial properties and ought to be granted the prayers sought.

Defendant's Submissions

12. The Defendant submits that financial contribution requires proof of capacity that is for either the parties to have contributed financially towards the purchase of the properties, they had to have the money in the first instance. On the part of the Defendant, it is contended that she earned from her rental units, money won in the marathons she won and her police salary therefore had capacity to purchase and develop her properties comfortably.



13. That the contention that the Plaintiff was a farmer contractor, businessman, coach and resigned police officer did not meet the evidentiary threshold, to wit there was no evidence of sale of milk or his engagement in farming, or that he had employed his brother nor did he call any witness to confirm his claims.
14. She relies in PNN v ZWN [2017] eKLR to submit that the Plaintiff's contribution in the course of the marriage was negative.
15. The Defendant further asserts that the Plaintiff illegally sold properties bought during the course of these proceedings despite there being preservative orders in place and some of these properties were illegally left out of the summons and further the other properties that were left out of the summons.

Analysis and determination

16. This matter concerns the determination of what constitutes matrimonial property from the properties listed and identified through pleadings and the equitable division of such between the Plaintiff and the Defendant. This inquiry extends beyond tracing financial transactions. It requires a broader appreciation of the circumstances under which the properties were acquired as well as the relational dynamic that shaped those acquisitions.
17. The parties in this case entered into a marriage commencing in the year 2009 and subsisting until on or about 2014, during which union they were blessed with one child. At the time of meeting, both parties were police officers in active service. The Defendant, however, distinguished herself as a renowned athlete, having participated in various international competitions and thereby earning income and recognition beyond her police salary. The Plaintiff also alluded to being an athlete and competing locally.
18. During the coverture, properties were acquired and are subject to the proceedings herein. In resolving this dispute, the Court has carefully considered the pleadings, testimonies, submissions, and authorities cited by both parties. Against this background, the issues germane for determination are
 - i. Which of the properties listed in the pleadings properly constitute matrimonial property within the meaning of the *Matrimonial Property Act*.
 - ii. Whether, and if so to what extent, is the contribution of either party the acquisition of matrimonial property.
 - iii. Whether the properties Purchased prior to the union but partly developed during the union should be considered during the distribution.
 - iv. Whether the properties left out the summons are to be factored in the distribution.
 - v. Whether the properties admittedly sold or otherwise disposed of by the Plaintiff during the pendency of the litigation should be taken into account in the distribution.
19. Section 6 of the *Matrimonial Property Act* 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.



20. In *T.M.V. vs F.M.C* [2018] eKLR, Nyakundi J. opined that:-
- “...for 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 matrimonial property.”
21. From the pleadings and evidence, the Court finds that properties acquired. This Court is therefore satisfied that properties that fall with the definition as set out in Section 6 of the *Matrimonial Property Act* are:-
- a. Bahati/Kabatini Block 1/XXXXX was purchased for Kshs. 2,300,000/ vide a Sale Agreement dated 20th February 2013.
 - b. That Nyandarua/Silibwet/XXXXX was purchased for Kshs. 220,000/ vide a Sale Agreement dated 22nd April 2014.
 - c. Nandarua/Silibwet/XXXXX was purchased for Kshs. 760,000/ vide a Sale Agreement dated 22nd October 2013.
 - d. Nyandarua/Silibwet/XXXXX was purchased for Kshs. 860,000/ vide a Sale Agreement dated 12th April 2013 title issued on 16th April, 2013
 - e. Nyandarua/Silibwet/XXXXX was purchased for Kshs. 1,050, 000/ vide a Sale Agreement dated 1st November 2012
 - f. Plot No. XXXX Core Housing Site & Service Purchase Scheme was purchased for Kshs. 655,000/ vide the Sale Agreement dated 31st October 2012.
 - g. Plot Number XXXX Co – Site Nyahururu Municipality was purchased for Kshs. 1,000,000/ (One Million) vide a Sale Agreement dated 22nd February 2012.
 - h. Sipili Donyoloip Block 2/XXXXX (Mutukanio) was purchased for Kshs. 200,000/ vide a Sale Agreement dated 25th November 2013.
 - i. Title Number I.R XXXX was purchased for Kshs. 2,350,000/ vide a Sale Agreement dated 9th January 2013.
22. Under Section 2 of the Matrimonial Act contribution towards the acquisition of matrimonial property is defined under 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.



23. Pertaining contribution, Section 7 of the *Matrimonial Property Act* Provides 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.”
24. Section 2 of the Act leans towards a broad conception of contribution, encompassing both monetary and non-monetary inputs. Nonetheless, Section 7 of the Act establishes contribution as the central criterion for distribution, thereby requiring the Court to evaluate both tangible and intangible inputs.
25. On the part of the Plaintiff, he was in active police service throughout the coverture since he applied to retire from the Police Service on the 16th of July 2014 and the same was allowed on the 4th of September 2014. His argument is that is that that he contributed financially through his salary and his business of farming and a contractor. Non-financially was through oversight of construction projects, coaching and childcare. He produced documents to demonstrate how he acquired the properties in question.
26. Upon scrutiny of the and through cross examination, glaring discrepancies emerge in the Plaintiff’s account of acquisition. For instance,
- a. LR XXXX Cosite Nyahururu Municipality was purchased vide sale agreement dated 31st October, 2012. The Plaintiff claimed to have purchased the property from the proceeds of the sale of KBW XXXX disputing the Defendant’s claim of purchasing the same from the proceeds of the London marathon. The NTSA records of the said vehicle KBW XXXX indicate the vehicle was registered in the name of the Plaintiff on 6th September, 2013, a glaring impossibility
 - b. Nyandarwa/Silibwet/XXXX was purchased vide sale agreement dated 22nd October, 2013. Plaintiff claimed he bought it by sending money to the Defendant who bought it the same day from proceeds he had received following the sale of motor vehicle registration number KBU XXXX to James Ndichu. The NTSA records availed demonstrate that the vehicle was sold James Ndichu in the year and registered on 27th December, 2012
 - c. The Plaintiff claimed to have purchased LR No. XXXX (Free Area) following the sale of Nyandarua/Ol Kalou Central/2168 and the sale of trees from his Nyandarua/Ol Kalou Central/XXXX. It is contended that the improvements on this property were from proceeds borrowed from Tower Sacco.
 - d. The Plaintiff sold Nyandarwa/Silibwet/2074/XXXX/XXXX/XXXX and XXXX and admitted via text telecommunication while seeking forgiveness that he had disposed of the properties for purposes of improvement of LR No. XXXX (Free Area). The account of events does not seem to allign.
27. Beyond the initial discrepancies, the record discloses further instances that undermine the Plaintiff’s credibility;
- a. Nyandarua/Olkalou Central/2168, vide sale agreement dated 19th March 2012, is suspect as the green card indicated that the sale occurred in the 2016 casting doubt o the authenticity of his account.
 - b. Nyandarua/OlJOROROK Salient/XXXX vide sale agreement dated 6th June 2012. The sale happened in 2011 to one Lucy Kirimi



- c. The records also show that Nyandarua/Olkalou Central/3296 was never sold vide sale agreement dated 18th October, 2012. The property was still in the name of the Plaintiff up to the year 2015 when he sold it to Paul Ngotho and not Ann Magairi.
 - d. As regard Nyandarua/Olkalou Central/XXXX, the Plaintiff claimed to have sold it on 30th August 2013. The green card availed indicates that the Plaintiff never owned that property for him to even sell it.
 - e. He claimed to have sold the Motor Vehicle Registration KAJ XXXX to one JKM, while NTSA official search indicates that show that the said motor vehicle was still registered in the name of the Plaintiff during the trial.
 - f. He claimed to have sold Motor Vehicle Registration KBW XXXX on 22nd December, 2012 but the NTSA motor vehicle search does not reflect his name No previous owner listed before Paul, who became the registered owner on 6th September 2019
 - g. He claimed to have sold KBU XXXX B on 20th August, 2013 show James Ndichu as the legal owner even before the alleged sale date. A document he said he did not trust. If he insists, he sold it in 2013, that would mean he wasn't the registered owner at all.
28. The Plaintiff questioned the authenticity of the official government records that were produced in evidence by the Defendant. He nonetheless failed to substantiate his assertions. He submitted that those were transactions that were made prior to meeting the Defendant.
 29. His failure to reconcile his narrative with official records during cross examination to a point to casting doubt on the NTSA records without proof reflects poorly on his reliability and casts doubt on the veracity of his broader claims of contribution
 30. The Plaintiff's conduct in these proceedings raises serious concerns regarding credibility and candour. His narrative of acquisition of matrimonial property is riddled with contradictions and discrepancies that are not minor errors but fundamental inconsistencies that go to the heart of his claims of contribution.
 31. The Plaintiff repeatedly asserted that he financed property acquisitions through sales of motor vehicles and parcels of land. However, documentary evidence demonstrates that in several instances, the vehicles or parcels he claimed to have sold were either not registered in his name at the material time, remained in his name long after the alleged sale, or had already been transferred to third parties before the dates he alleged. These contradictions suggest either deliberate misrepresentation and concealment of facts or reckless disregard for accuracy.
 32. On childcare, when the Plaintiff was questioned about basic details concerning the child such as date of birth schooling details, he was not in a position to answer. The record further shows that the Defendant has sole custody of their child which she alleged was necessitated by her departure from the matrimonial home following alleged incidents of physical abuse, threats and the Plaintiff orchestrating fake kidnapping on himself.
 33. The Plaintiff asserted that he was a farmer, businessman and contractor. None of these assertions are by evidence. It is acknowledged that proving farming income can be difficult, as such contributions are often informal and not always documented. Nonetheless something should give for instance the allegation that he sold milk to Kenya Cooperative Creameries (KCC) being a formal entity, ought to have been supported by proof of payment or evidence of engagement.



34. The burden of proof under Section 107 of the *Evidence Act* lies on the party who asserts, and in this case, the Plaintiff has failed to discharge it with respect to childcare or alternative source of income.
35. The Plaintiff's claims are further undone by the reality of circumstances. His salary of a police officer coupled with his vague assertions of being a businessman do not support the scale of acquisitions he purports to have made. More tellingly he had another wife and family to maintain and the record shows that between February and May of 2012 he remitted close to one million to his 1st wife close to one million shillings.
36. Be that as it may, the Defendant herself acknowledged that the Plaintiff was her assistant coach and did accompany her to the athletic competitions and from what is appears, he was the one who was managing her finances and overseeing some of her projects as she was focusing on training. This admission is not insignificant.
37. The Defendant on the other hand on top of earning a salary from her police career, she stated that she had properties prior to meeting the Plaintiff. As for Umoja/Block8314/231 she claimed to have developed it up to 5th floors and had only not concluded the finishings of the 4th and 5th floor which she did following payment from her winnings.
38. As for the other properties she claimed to have payment payments by cash and by sending the amount to the Plaintiff to make the payments. Only Bahati Kabatini/1XXXX had records that she purchased exclusively where she made a direct deposit of 2 million on 20th February, 2013 with the balance being paid in cash by herself
39. She availed records of monies she deposited in the Plaintiff's accounts on 10th April, 2012, 9th May, 2012, 29th May, 2012, 22ⁿ April, 2014 if I can list a few.
40. She annexed records of her winnings from the Dubai marathon where she made USD 43,500, USD 26,000, USD 28,000 and Chicago marathon she received USD 34,600. This translates to approximately Kshs 17 million with the current exchange rate noting the exchange rate in the year 2012 was higher. She ran the Tokyo and London Marathons in 2013.
41. These winnings further correspond with large deposits made to the Plaintiff Equity bank account No. XXXX corresponding with the Defendant account that money was being channeled through the Plaintiff's account.
42. She also produced statements of her Dollar Account, Bank of Africa Accounts, where substantial deposits were made by her managers over the period and the transaction stop her local agent. There are direct deposits made to the Plaintiff equity account direct from the Defendants Bank Account in Bank of Africa Cooperative Bank and Equity Bank where rental income earnings from her police salary and athletic career were being channeled.
43. Kiage JA in P N N v Z W N [2017] KECA 753 (KLR) stated

“...A spouse may be so uncooperative, so wasteful, so distant, so all-over that he or she has hardly provided the warmth of companionship on the basis of which it might be said they made a non-monetary contribution to matrimonial property. In such instance it may well be that the one spouse achieved all they did and acquired not because, but rather in spite of their lazy, selfish, wasteful, wayward, drunken or draining mate

In such circumstances, an assessment of the inauspicious party's non-monetary contribution may well turn out to be in the negative, the account in debit. No fifty-fifty philosophy would grant such a party any right to property acquired without their



contribution and notwithstanding their negation or diminution of the efforts towards its acquisition.”

44. Guided by the Court of Appeal decision, the law underscores that, ownership of matrimonial property vests in spouses according to their respective contributions, and that division upon dissolution of marriage must be guided by equity rather than mere formal registration.
45. The evidence before this Court, it is plain that the Plaintiff rode on the Defendant’s athletic triumphs, inserting himself as the custodian of her finances and overseer of her projects while she labored in training and competition. The Defendant’s winnings, substantial and with verifiable traces, were channeled through his accounts, forming the bedrock of property acquisition. Yet, instead of honouring the trust reposed in him, the Plaintiff misrepresented acquisitions, disposed of property in defiance of Court orders, and failed to account for monies entrusted to him.
46. His conduct was parasitic, feeding-off the Defendant’s sweat and sacrifice, and in so doing, he wronged her gravely. Marriage, is a partnership of equals, but here the Plaintiff converted it into an avenue for exploitation, betraying both the fiduciary duty and the mutual confidence that ought to govern matrimonial dealings.
47. On the other hand, while the law recognizes non-monetary contributions it simultaneously demands evidentiary grounding to establish the extent of each spouse’s input. Childcare cannot be considered a contribution on the part of the Plaintiff and if there was non-monetary contribution, it was in the nature of companionship.
48. As to whether the properties admittedly sold or otherwise disposed of by the Plaintiff during the pendency of the litigation should be considered in the distribution, the Plaintiff admitted to disposing Nyandarwa/Silibwet/2074/XXXX/XXXX/XXXX and XXXX during the pendency of litigation despite there being a conservatory order in force.
49. This demonstrates a lack of respect for the judicial process. Such actions frustrate the equitable division of matrimonial property and suggest an attempt to manipulate the properties to his advantage. His explanation that the proceeds were applied to improve another property does not cure the breach. While improvements may benefit the properties, unilateral disposal of assets during litigation prejudiced the Defendant, who is entitled to have the properties preserved until distribution.
50. From the foregoing, the Court is satisfied that the Defendant was the financial muscle of the marriage. Her trust was betrayed her financial strength exploited and equity demands that she be protected.
51. In the circumstances, and guided by Section 7 of the *Matrimonial Property Act*, the Court makes the following orders:
 - a. Umoja/Block 8314/231 registered in the name of the Defendant shall remain in the Defendant’s name wholly, she having demonstrated substantial financial input in its development.
 - b. Bahati Kabatini/1XXXX: To remain exclusively with the Defendant, she having produced clear records of direct purchase and payment.
 - c. Plot No. XXXX Co-Site Nyahururu Municipality (Matrimonial Home) to be shared, with the Defendant retaining majority interest (80%) and the Plaintiff a minority interest (20%), reflecting his limited but valid non-financial contribution



- d. LR No. XXXX (Free Area), Plot No. XXXX Core Housing Site & Services Purchase Scheme, Sipili Donyoloip Block 2/XXXX (Mutukanio), Title number IR XXXX and Nyandarwa/Silibwet/XXXX to remain exclusively with the Defendant,
- e. Nyandarua/Silibwet parcels (2074, XXXX, XXXX, XXXX, XXXX): Already disposed of by the Plaintiff in violation of conservatory orders. The proceeds thereof are deemed part of his share, to prevent him from benefiting from contemptuous conduct.
- f. The Plaintiff shall effect transfers of the properties in his name within 60 days of this judgment
- g. There shall be no Orders as to costs.

It is so ordered

DATED, SIGNED AND DELIVERED AT NAKURU ON THIS 23RD DAY OF FEBRUARY, 2026.

MOHOCHI S.M.

JUDGE

