



REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI
FAMILY DIVISION
ORIGINATING SUMMONS NO. E042 OF 2021

FLORENCE WAIRIMU WAMBUGU.....

APPLICANT

VERSUS

KEVIN MUREITHI GITHUI.....

RESPONDENT

JUDGMENT

INTRODUCTION

1. By Originating Summons dated 11th December 2020, the Applicant seeks the THAT-

- a. A declaration do issue that the property known as Plot No.1355 under Certificate No. 3438, with all the buildings and developments thereon acquired by the joint funds and efforts of the applicant and the respondent during the subsistence of their marriage and registered in the name or in the possession of the respondent are owned jointly by the applicant and the respondent.
- b. A declaration do issue from this Honourable Court that the property known as Plot No. 1355 under certificate no 3438, with all the buildings and improvements therein and acquired during the marriage, in the names of the

- applicant and the respondent, is matrimonial property, held in trust for the applicant and owned jointly and or equally by the applicant and respondent herein.
- c. THAT the said property be settled for the benefit of the applicant in such a manner and proportions as this Honourable Court deems fit and just.
 - d. THAT a declaration do issue from this Honourable Court that the said applicant has a beneficial interest in the matrimonial property being equal and or more to the respondent and which be settled for the benefit of the applicant in such a manner and proportions as this Honourable Court deems fit and just.
 - e. THAT the respondent himself, his agents and or servants be restrained from alienating, encumbering or in any other way disposing of the said property unless by an order of this Honourable Court.
 - f. THAT the respondent be condemned to pay the costs of this application and incidentals thereto.
2. The Originating Summons is supported by her affidavit sworn on the same date. She and the defendant were married from 1st May 2010; the marriage was dissolved on 25th November 2019 by decree nisi, which was made absolute on 13th March 2020. During the marriage, the couple jointly acquired the property subject of the Petition. She asserts that she made a

substantial contribution towards the acquisition of the property. She has annexed receipts as proof of financial contribution.

3. The Couple was blessed with 3 children. She managed the home and took care of the children. Her contribution includes duties she undertook as a wife and mother. She seeks her share of the property.
4. The respondent filed a replying affidavit sworn on 8th May 2024. He admits that the property is registered in their joint names but denies that the applicant made any contribution towards its acquisition. He states that at the time of the marriage, the respondent had no income, and she has not established her source of income in support of her assertion that she made any contribution.
5. On the contrary, he states that he was working away from home and he sent the money to the applicant to purchase and develop the property. He denies that the asset is matrimonial property and proposes that the property be registered for the benefit of their 3 children.

6. The matter proceeded by viva voce evidence. On the eve of the hearing, counsel for the respondent, by letter dated 12th January 2025, wrote to the counsel for applicant indicating he would not be ready to proceed for the hearing scheduled on 14th January 2026 as he had lost touch with his client. The applicant was opposed to the adjournment. Noting that the date had been taken by consent. I declined to adjourn the matter and the matter proceeded for hearing on that date.
7. The applicant testified as the sole witness. She reiterated her averments in the supporting affidavit. At the close of the hearing, I directed that the parties file submissions. The Applicant's submissions are dated 20th January 2025(Sic).
8. She identifies the issues for determination as
 - a. Whether or not the said plot and development constitute matrimonial property?
 - b. Whether the plaintiff is entitled to a share of the said matrimonial property and to what extent
9. She relies on the Court of Appeal decision in **PAWM v CMAWM [2018] eKLR** and urges that both her direct and indirect contribution be considered in determining her share of the matrimonial property. Reference is also made to

Supreme Court decision in **JOO V MBO [2023] eKLR** to urge that the Court should make a fair and equitable distribution.

ANALYSIS AND DETERMINATION

10. Upon considering the pleadings herein, evidence and submissions filed and the relevant law, I discern the following to be the issues for determination.

- a. Whether Plot No. 1355 under Certificate No. 3438 comprises Matrimonial Property?
- b. If the answer to (a) is in the affirmative what is the share of the respective parties commensurate with their contribution?
- c. Arising from (a) and (b) above what are the consequential orders?

11. Section 6 of the Matrimonial Property Act, 2013 provides the definition of Matrimonial property to include

Meaning of matrimonial property

(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.

12. The certificate of ownership issued by Cheko Housing Limited in respect of Plot No 1355 shows it was registered in the name of Kevin Mureithi Githui and Florence Wairimu Mureithi on 10th September 2013. In **JMU v JBM [2025] KEHC 10419 (KLR)** the Court observed that *‘the determination hinges on the acquisition date of each disputed asset, as Section 6 clearly delineates matrimonial property as comprising assets acquired during the subsistence of the marriage’*.

13. The parties were married between 1st May 2010 and 13th March 2020. The property was acquired during the pendency of the marriage it comprises matrimonial property.

14. On the respective shares, the property is registered in the joint names of the parties herein. Section 14 of the Matrimonial Property Act makes the following presumption about ownership of matrimonial property

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. (Emphasis Supplied)

15. I am duly guided by the decision in **O K N v M P N [2017] eKLR**, where the Court of Appeal had this to say about this presumption:

Where a property is registered, in the joint names of the parties, there is normally a presumption that each party made equal contribution towards its acquisition (See Kivuitu -v- Kivuitu, [1991] KLR 248. The presumption is however, rebuttable by either party showing that their contributions were not equal.

16. The law therefore places the onus on the party who challenges the presumption to rebut it. The applicant has availed receipts, which she says are indicative of her financial contribution. Concerning her indirect, non-monetary contribution, she testified that she was a homemaker. The respondent has not adduced any evidence to disentitle her of an equal share in the matrimonial property.

17. The applicant on her part sought a larger share for the reason that the respondent has walked away and left her solely responsible for the children. There is a separate legal

regime for the applicant to pursue support in maintenance of the children, the focus of the Court herein is limited to determining the respective share of the matrimonial property. I therefore find that the beneficial interests of the parties in the matrimonial property are equal.

18. Pursuant to rule 30 of the Matrimonial Property Rules, these are the final orders-

- a. Property **Plot No. 1355 under Certificate No. 3438** comprises matrimonial property
- b. The property shall vest in the applicant and respondent in equal shares
- c. The Counsel for both parties will jointly nominate a valuer within 21 days from the date hereof.
- d. If counsel are unable to agree, then Counsel for the applicant will nominate a valuer within 14 days from the lapse of the period under (c) above
- e. The valuer so appointed will prepare a report within 21 days of nomination
- f. The respondent shall have the first right to buy out the Plaintiff within 45 days of the presentation of the report of the valuer
- g. In the event he elects not to buy out the applicant or is unable to do so, the properties shall be sold and the net proceeds shared in the proportion of 50:50

- h. Both parties shall execute documents necessary for the compliance with these orders within 14 days of presentation of the same, in the event that any party fails to execute the documents within this period, the documents will be executed by the Deputy Registrar, Family Division, Milimani Court, Nairobi
- i. This being a family matter each party will bear their own costs.
- j. 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 27th day of February, 2026.

P. M NYAUNDI
JUDGE

In the presence of:
Fardosa Court Assistant
No Appearance by Parties