



**WW v JMM (Matrimonial Cause E004 of 2023)
[2026] KEHC 2268 (KLR) (26 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 2268 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
MATRIMONIAL CAUSE E004 OF 2023
RM MWONGO, J
FEBRUARY 26, 2026
IN THE MATTER OF THE DIVISION OF MATRIMONIAL PROPERTY
AND
IN THE MATTER OF THE MATRIMONIAL PROPERTY ACT, CAP 152 OF LOK
BETWEEN
WW APPLICANT
AND
JMM RESPONDENT**

JUDGMENT

The Originating Summons (OS)

1. The applicant initiated this case through an OS dated 16th October 2023. In it she seeks the following orders:
 1. Spent;
 2. Spent;
 3. Spent;
 4. That this Honorable Court be pleased to issue a declaratory order declaring that the movable and immovable properties being Peugeot 406 KAR xxxP, Toyota Hilux Pick Up KAR xxxP; Peugeot 504 KAK xxxH; Gaturi Githimu xxxx- Matrimonial home; The adjacent plot to the House Gaturi Githimu xxxx; Muthatari plots- Gaturi Weru xxxx; Gaturi Weru xxxx; Mbeti/ Gachoka xxxx; Gategi plot No 12 storey rented out to Nguruvani Medical shopping centre; 10 acre piece of land with House in Kakindu Mwea Gategi No xxx; 1/4acre plot in Mwea next to shopping centre; Lorry Isuzu KAW xxxG; Lorry Isuzu KAS xxxM Nairobi House plot



No.xxx/11095/69 South C Area; Hospital business-Tumaini Brighten Holdings Limited t/ a Tumaini Brighten Medical services other undeclared properties (among others to be listed) were acquired through the joint efforts of the Petitioner and the Respondent during their marriage and registered in the name of the Respondent and some in the joint names of the Petitioner and Respondent, and presently in possession of the Respondent are owned jointly by the parties, and the same are held in trust by the Respondent for the benefit of the Petitioner in the ratio of 50:50:

5. That this Honorable Court be pleased to issue a declaratory order declaring that all matrimonial properties listed in paragraph 4 above (and others to be listed) are jointly owned by the Petitioner and the Respondent and the same are held in trust by the Respondent for the benefit of the Petitioner;
 6. That this Honourable Court be pleased to issue an order directing equal division of all matrimonial properties between the parties;
 7. That this Honourable Court be pleased to issue an order to restrain the Respondent or his servants or agents from alienating, transferring, giving in exchange or encumbering or in any other way disposing any of the matrimonial properties;
 8. That this Honorable Court be pleased to issue an alternative order that the said assets be valued, their value be divided, and each party be given an option of buying out the other's share within a period of 120 days from the date of the judgment, and in default the said properties, with the exception of the matrimonial home on plot Gaturi/Githimu/S739 be sold and the net proceeds of sale shared out between the Petitioner and the Respondent;
 9. That this Honorable court be pleased to issue any other order that it may deem fit; and
 10. That the costs of this application be provided for.
2. The application was founded on grounds that the marriage between the parties ended with an order of the court dissolving it on 06th October 2023. According to the applicant, the marriage was blessed with 3 issues who were all under her care as the basic parent for most of the period of the marriage. That the respondent worked in and out of the country and for the time when he was working outside the country, he forced the applicant to resign from her work as a Registered Nurse to relocate abroad with him.
 3. The applicant stated that between 1994 and 2003, the respondent had been working outside the country with the applicant and the children by his side. The applicant stated that throughout the marriage, they acquired several assets and she participated in their acquisition, maintenance and development in various ways. She stated that when the respondent forced her to move back to Kenya with the children, she retained a role as the sole parent for a long time while she also took care of the matrimonial home. She added that she was responsible for or took care of their other properties, farms and the developments on them, the management of workers and vehicles and livestock management.
 4. She claimed that as she labored to maintain the developments, the respondent made a habit of disposing the livestock and other properties without consulting her yet she was a co-owner. She now seeks to have 50% of all the assets acquired during the marriage apportioned to her, given that she had demonstrated her contribution in their acquisition and maintenance.
 5. The applicant produced documentary evidence of her contribution to the acquisition and maintenance of the assets including records of workers supervision schedules for the farms and construction and hospital records for their clinic which was a joint business. She stated that even



though some of the properties are registered in the name of the respondent, she would like the court to hold that the properties are held by the respondent in trust for her, a position that is settled in the [Matrimonial Property Act](#).

6. The applicant's list of properties filed on 10th November 2023 discloses the following:
 1. Peugeot 406 KAR xxxP chassis number VF3BRFRE-81042134
 2. Toyota Hilux Pick Up KAR xxxP chassis number AHT31YN5109032882;
 3. Peugeot 504 KAKxxxH;
 4. Lorry ISUZU KAW xxxG chassis number
 5. ISUZU lorry KAS xxxM chassis number 7102415
 6. Gaturi/Githimu/xxxx measuring 0.10 Ha (0.247Ac)
 7. Matrimonial home (where the Petitioner resides) built within the property known as Gaturi/Githimu/xxxx
 8. The adjacent plot to matrimonial home Gaturi Githimu xxxx measuring 0.10Ha;
 9. Muthatari plots; Gaturi Weru xxxx and Gaturi Weru xxxx;
 10. 3 Acres Mbeti/Gachoka xxxx;
 11. Gategi plot No 1 hosting a Two commercial shops (bungalow) as well as a two-storey building rented out to Nguruvani Medical Centre at Gategi Shopping Center
 12. Proceeds in the form of rental income from Gategi Plot No 1 commercial shops and Nguruvani Medical Center
 13. 10 acre piece of land with house in Kakindu Mwea Gategi No xxx;
 14. 10 acre piece of land at Gategi No. 911
 15. 14 Acre plot number xxxx in Mwea next to Gategi shopping centre with Two single rooms and one double room rentals constructed on it;
 16. Proceeds in the form of rental income from the rental rooms constructed on a 14 Acre plot number xxxx in Mwea next to Gategi shopping centre
 17. LR xxx/11095/69 South C Area;
 18. Proceeds in form of rental income from LR xxx/11095/69 South C Area
 19. Land Parcel in Utawala
 20. Hospital business-Tumaini Brighten Holdings Limited t/a Tumaini Brighten Hospital incorporated on 20th April 2018 under registration number PVT-MKU325E with a Nominal share capital of 100,000/-
 21. 100 X 100 Plot behind the Medical facility separated by a murram road and the developments thereon comprising of a residential home where the Respondent Resides.
 22. 3 Acres parcel of land at Makima next to the Market along Muriru Road towards Thiba;
 23. Borehole project standing on a One (1) Acre parcel of land in Makima jointly owned by the Petitioner and Respondent;



24. Proceeds from the Borehole project on One (1) Acre parcel of land in Makima.

Replying Affidavit

7. In response to the OS, the respondent filed a replying affidavit dated 20th December, 2023, in which he conceded that indeed his marriage to the applicant had ended. He stated that he had acquired some properties before he married the respondent and one such property is the unregistered 10-acre piece of land in Kakindu Mwea Gategi No xxx. He denied forcing the applicant to resign and stated that she left her formal employment because of pregnancy complications.
8. He stated that the applicant's contribution towards the acquisition of the named properties is minimal and some of the properties named have since been disposed. He conceded to disposal of some of the properties in the following manner hence they are not available for distribution (Paragraph 13 of the replying affidavit):

“ 13.

- a) Toyota Hilux pick up registration number KAR xxxP - the same was not jointly owned and I bought it when working in Namibia in 1997 and I sold it on 28.4.2022. (Annexed is a copy of the old log book and sale agreement marked JMM 2(a) and 2(b).
- b) Motor vehicle registration number KAW xxxG Isuzu lorry was never jointly owned with the Petitioner. I bought it using a loan from Co-operative Bank in 2013 and I sold it to John Nyaga Njiru in November 2019 (Annexed copy of logbook and sale agreement marked JMM3(a) and 3(b);
- c) Motor vehicle registration number KAS xxxM Isuzu lorry was never jointly owned with the Petitioner. I had bought it through my AMREF gratuity payments in May 2013 and I have already sold it in October 2023 to Philip Mutungi Ndolo (Annexed are copies of the previous log book, the current registration certificate and sale agreement marked JMM 4(a), 4(b) and 4(c);
- d) Land parcel No. Gaturi/Githimu/xxxx was jointly owned with the Petitioner but which I 100% funded alone through a loan from the Standard Bank in the year 2004 and which both I and the Petitioner sold and shared the proceeds in the year 2020 and transferred to Charles Mutinda Muli and Damaris Wambui Kamau. (Annexed are copies of the previous title deed, LCB consent, transfer and the new title deed marked JMM 5(a), 5(b), 5 (c) and 5(d);
- e) Land parcel No. Gaturi/Weru/xxxx was jointly owned with the Petitioner but which I 100% bought alone with my money while working in Namibia in the year 2000 after the Petitioner refused to join me. I and the Petitioner sold the land and shared the proceeds in September 2019 and transferred it to Charles Mutinda Muli and Damaris Wambui Kamau (Annexed are



copies of the previous title deed, application for LCB Consent, transfer and the new title deed marked 6(a), 6(b), 6(c) and 6(d).

- f) Land parcel No. Gaturi/Weru/xxxx was jointly owned with the Petitioner but which I solely 100% bought with my money while working in Namibia in the year 2000 after the Petitioner refused to join me. I and the petitioner sold the land and shared the proceeds in September 2019 and transferred it to Charles Mutinda Muli and Damaris Wambui Kamau. (Annexed are copies of the old title deed, application for LCB consent, transfer and the new title deed marked 7(a), 7(b), 7(c) and 7(d);
- g) Land parcel No. Mbeti/Gachoka/xxxx was never jointly owned. I bought it solely with my gratuity payments after working in Botswana in 1997 and which I subdivided and sold in March 2018. (Annexed is a copy of the old title deed and mutation form marked JMM 8(a) and JMM 8(b);
- h) Gategi Plot No. 1 hosting two commercial shops and Ngurubani Medical Centre was never jointly owned but I bought it alone in 2002 when I was working in Namibia. I constructed it using bank loans and AMREF gratuity in 2013. I sold it on 10.8.2021 to Charles Mutinda Muli and Damaris Wambui Kamau (Annexed are copies of transfer documents marked JMM 9(a), 9(b), 9 (c), 9 (d), 9 (e) and 9(f);
- i) 1/4 plot No. xxxx in Mwea next to Gategi Shopping Centre with rental rooms; was never jointly owned. I bought it solely with my money in 1996 while working in Botswana and constructed with AMREF Sacco loan and which I sold to Magdaline Ndunge Mutunga in the year 2020 (Annexed are copies of the previous ownership document and sale agreement marked JMM 10(a) & 10(b);
- j) Plot No. LR xxx/11095/69 South C area Nairobi was never jointly owned but I solely funded it in 2003 with AMREF Sacco loans and from Standard Bank. I sold it on 23.11.2022 to Warda Ali Osman (Annexed is a copy of the sale agreement marked JMM 11).
- k) A 10-acre piece of land at Gategi No. 911 was never owned by me. It was owned by my late grandmother Susan Kiloiko Musembi and which after succession was transmitted to Priscila Mwangeli Mbatha and who sold it to Kelvin Mwangi Wambui (Annexed are copies of Certificate of Confirmation of Grant (P&A 54) and sale agreement marked JMM 12 (a) and 12(b).”

9. He denied any knowledge of some of the properties named by the applicant and insisted that the properties he has disposed of do not form matrimonial property, neither does any income from them. He stated that the only properties available and which he owns solely are those named in paragraph



16 of the replying affidavit as follows (verbatim) and that he acquired them without the applicant's contribution:

“ 16.

- a. Motor vehicle registration number KAR xxxP Peugeot is not jointly owned with the Petitioner. I bought it in Namibia in February 2002 through a bank loan. I drove it alone to Kenya and registered it. (Annexed is a copy of the log book marked JMM 13).
- b. Motor vehicle registration number KAK xxxH Peugeot 504 is not jointly owned. I bought it in Botswana in 1994 through a bank loan and drove it to Kenya and registered it in my name. (Annexed is a copy of the log book marked JMM 14)
- c. Land parcel No. Gaturi/Githimu/xxxx is jointly owned. I bought the plot alone in August 2000 when working in Namibia when the Petitioner refused to join me. I funded and designed the construction of the 5 bedroom house on the said plot which was our matrimonial home from July 2003 until the Petitioner denied me access in February 2020 at a cost of 8.1million using my salary while working in Namibia and bank loans from January 2000 to May 2002. (Annexed are copies of the search, building plans approval and the completed house photograph marked JMM 15(a), 15(b) and 15(c);
- d. Land parcel No. xxx in Kakindu Mwea is not jointly owned but was adjudicated to me in 1979 almost 10 years before I and the Petitioner got married. No titles have been issued to date and that property cannot definitely constitute matrimonial property but it is where my original rural home is situated;
- e. The hospital business Tumaini Brighten Medical Centre which I solely operate as a sole director is on leased property Plot No. 33 MAKIMA owned by Rose Ndunge Mutisya. This is definitely not matrimonial property available for distribution. (Annexed are copies of Lease Agreement, Company copy of records, Certificate of incorporation marked JMM 16 (a), 16(b) and 16(c);
- f. The Borehole project standing on 0.05Ha parcel of land in Makima is not jointly owned. I constructed it for the hospital and the local community in 2020 and water is not sold. (Annexed are copies of sale of land agreement, WARMA application, water permit approval and water permit marked JMM 17(a), 17(b), 17(c).”

10. The respondent reiterated that the properties under paragraph 16 of the replying affidavit belong to him alone and they do not constitute matrimonial property as they were acquired through his efforts alone. He termed the application as frivolous and one to be dismissed.



Applicant's Further Affidavit

11. In her further affidavit dated 12th February 2024, the applicant produced proof of her contribution towards development of the 10-acre piece of land named Kakindu Mwea Gategi No xxx through construction of a house thereon. She stayed on that property between 1996-1997 before they relocated abroad and then returned to live in Embu. That at the time of constructing that house, she was still in employment and she injected money into the project from her salary and loans attached to it from various financiers. That for that matter, and in compliance with section 9 of the [Matrimonial Property Act](#), she has a beneficial interest in that property. She stated that she also contributed towards purchase of Kwale/Kidiani/xxx which land was later sold and the proceeds used to purchase a 10-acre piece of land at Gategi No. 911.
12. She stated that at the time she was forced by the respondent to resign and move abroad with him, she did not have any medical complications related to pregnancy as he claimed. She produced her appointment letter as a registered nurse in Kenya and copy of her passport. She also produced copies of her employment letter to work in Botswana. She stated that during the years she worked in Botswana, she contributed financially to the assets of the family until the respondent forced her to resign and return to Kenya. She stated that the respondent forced her to resign because there were no qualified specialists to handle her pregnancy in that country, in any event, an allegation that was false.
13. She reiterated that during their marriage, she was the primary parent for their children, being present for them all the time. That even when they lived in Botswana, they stayed in separate towns and she was living with the children alone. She produced documentary evidence and photographs to show that she was running family projects and businesses by herself for most of the period of the marriage. It was her case that the properties allegedly sold by the respondent as he stated in the replying affidavit were sold without her consent yet they were matrimonial property.
14. That in February 2020, the respondent promised to give her the matrimonial home on parcel number Gaturi/Githimu/xxxx as a gift on condition that she signs consent forms for transfer/ sale of Gaturi/Githimu/xxxx, and she did. The respondent later revoked his offer to give parcel number Gaturi/Githimu/xxxx to the applicant as a gift even though there was an understanding to that effect. Therefore, she lays 100% claim on the matrimonial home.

Evidence at the trial

15. The matter was heard viva voce.
16. PW1 was the applicant. She stated that they got married on 5th December 1987 and the divorce became absolute on 6th October, 2023. She relied on her supporting and further affidavits and the annexures thereto as her evidence-in-chief. In cross-examination she stated that Kwale/Kidiani/xxx was not registered in the name of the respondent and it was sold in 2009 or 2010. She is not claiming it. However, she is claiming motor vehicle KAK xxxH whose registered owner is not indicated and the other vehicles which are still registered in the name of the respondent. She is claiming ownership of the property in Utawala whose identification documents she did not provide. She also did not provide identification documents for Mbeti/Gachoka/xxxx; That Gaturi/Weru/xxxx and xxxx are registered to other people and not the respondent.
17. She stated that in 2020, Gaturi/Weru/xxxx was to be sold on condition that she would have Gaturi/Weru/xxxx registered in her name. Regarding her monetary contribution, she provided as evidence only the pay slips that she could find and she did not provide any for the period she worked in Botswana.



- Regarding Gaturi/Weru/xxxx, she stated that the property was bought from monies raised by both of them and that she contributed Kshs.250,000/=.
18. She stated that the respondent has been employed since 1987, but that she was forced to leave employment to accompany him to Botswana for work. Together, they had 3 children whom she solely cared for as the primary parent. That they both paid for their children's school fees without keeping a record of the ratios each paid. The respondent forcefully moved into the matrimonial home after leaving.
 19. PW2 was Evans Musomi Muema, one of their sons. He stated that the parents had 4 matrimonial properties which include the house in Embu Blue Valley on Gaturi/Githimu/xxxx, the Nairobi South C house, Makima House and the one in Kakindu. He stated that he lived in all those houses at different points in his life. That mother has lived in the Embu Blue Valley House from 2018-2025 until his father moved in; and that his father had lived in the Kakindu house since 2018. That the respondent wanted possession of the Embu house so that he could rent it out but before 2025, he was not living in it. The respondent told him this through a text message.
 20. In cross-examination, he stated that it is through the respondent's text message that he learned that the respondent was living at the Kakindu house. He did not know the registration numbers of the land on which the houses sat but he stated that they were acquired during the marriage. He stated that the applicant contributed towards acquisition and development of the Embu house as she monitored its construction while the respondent worked outside the country.
 21. RW1 was the respondent. In his statement he reiterated the averments made in the replying affidavit. He added that the only properties available for division and making up matrimonial property are (1) Gaturi/Githimu/xxxx and (2) Plot No. xxx Kakindu Gategi, all the other named properties having been disposed of. In cross-examination, he stated that the applicant did not participate in acquiring the properties yet she had the capacity to work like him. That during construction of the Embu house, the applicant had refused to accompany him abroad and so he had no choice but to supervise construction. That as he worked abroad, he provided for the children and he thought it best to register Gaturi/Githimu/xxxx in the applicant's name for safekeeping.
 22. He stated that he bought Gaturi/Weru/xxxx and xxxx without the contribution of the applicant but they were sold and he shared the proceeds with the applicant. He stated that the sale of properties was before the matrimonial proceedings began. He denied that all the vehicles are still registered in his name even though he entered into agreements to sell some of them. He stated that Tumaini Brighten Medical Center is not in his name, but is housed in leased premises. That the applicant did not contribute to acquisition and so she did not need to consent to their disposal.

Parties' Submissions

23. In her written submissions, the applicant relied on section 6(3) of the *Matrimonial Property Act* on contribution. She stated that she contributed financially towards acquisition of the matrimonial property since she was employed for the first 7 years of the marriage. She also contributed through non-monetary means by resigning from her formal employment several times in the marriage at the behest of the respondent so that she could be a primary parent to the children in Kenya and abroad; and that she also supervised development and farming activities on the matrimonial properties.
24. The applicant further submitted that in terms of section 14 of the *Matrimonial Property Act*, it should be presumed that the matrimonial properties were acquired through the joint efforts of the parties. She argued that parcel number Gaturi/Githimu/xxxx, the matrimonial home, was given to her by way of a gift from the respondent and this gift should be upheld in accordance with section 15 of the Act.



- That the respondent should be estopped from disputing the passing of this gift since he benefitted from the arrangement as the gift was premised on a condition (her consent to sell Gaturi/Githimu/xxxx) already fulfilled by the applicant.
25. Regarding Kakindu Gategi No.xxx and Plot No.911 Gategi, she submitted that even though the land was inherited by the respondent before their marriage, she had contributed to its development. On this she relied on the case of EJ v JKN [2024] KEHC 9166 (KLR) where the court held that under such circumstances, the developed part of the inherited property becomes matrimonial property. She stated that the property should be adjudged as matrimonial property.
 26. Regarding LR.xxx/11095/69, South C Nairobi, she submitted that the property was acquired during the marriage but the respondent purported to sell it for Kshs.10 Million but no such sale was completed. She stated that as far as she is concerned, the property is still matrimonial property and PW2 confirmed that he was raised there for some time. She lay claim on it and urged the court to find that if it was sold, the respondent should account for the proceeds thereof and be ordered to share the same.
 27. The applicant urged the court to scrutinize the possible dissipation of matrimonial properties concerning Gaturi/Weru/xxxx and xxxx which the respondent sold single-handedly, arguing that the applicant had refused to join him in the transaction. She also claimed a part of Plot No. 1 Gategi Market which hosts 2 commercial shops and Ngurubani Medical Center which the respondent sold without her consent. As for Tumaini Brighten Medical Services Hospital business, she stated that she had contributed her skills as a registered nurse and midwife to it, even though this non-monetary contribution was not acknowledged when the respondent allegedly sold the business.
 28. According to the applicant motor vehicles, Peugeot 406 (KAR xxxP), Toyota Hilux Pick Up (KAR xxxP), Peugeot 504 (KAK xxxH), Isuzu Lorry (KAW xxxG), and Isuzu Lorry (KAS xxxM), were acquired during the subsistence of the marriage. Therefore, she argues they constitute matrimonial property subject to equitable division under the *Matrimonial Property Act*. That even though the applicant claims to have sold them, they are still registered in his name as of January 2024.
 29. The applicant also claimed a part of the Makima Borehole Project which the respondent developed in 2020 while the marriage was subsisting and it sits on a 0.05Ha piece of land in Makima. She also argued that the respondent bought 2 plots of land in Utawala in 1998 and he paid for them in cash from one Bedan Syoki. She laid claim on those 2 properties which she said were also matrimonial property.
 30. Overall, the applicant relied on the cases of CKS v SOL & another [2025] KECA 103 (KLR), JOO v MBO; Federation of Women Lawyers (Intended Interested Party); Law Society of Kenya & 3 others (Intended Amicus Curiae) [2021] KESC 48 (KLR), MNM v PM [2022] KEHC 13783 (KLR), In Re-Estate of the Late Gideon Manthi Nzioka (deceased) (2015) eKLR, IC v SS [2024] KEHC 3316 (KLR) and Dileep Manibhai Patel v Samuel Mburugu Mwangi & others [2017] KEELC 3231 (KLR).
 31. On his part, the respondent relied on sections 2 and 6 of the *Matrimonial Property Act*. He stated that regarding the matrimonial home locate on Gaturi/Githimu/xxxx (Embu Blue valley), the same was purchased and developed through his single-handed efforts even though the parties jointly cohabited in the said house. Further, that the Memorandum of Understanding (MOU) by the respondent giving the ownership of the said home to the applicant was not signed by the applicant thus it remains non-binding for legal purposes. He denied having given this property to the applicant as a gift, and if the MOU was anything to go by, it was a mutual agreement and not a gift.
 32. He relied on the meaning of ‘gift’ according to the Black’s Law Dictionary and argued that the said property should be held as matrimonial property and not the applicant’s property. He argued that for estoppel to apply, there has to be a clear and unequivocal representation or promise by one party to



another. He denied that LR.xxx/11095/69, South C Nairobi and Gaturi/Weru/xxxx and xxxx were matrimonial property and stated that they were not available for division since they were already sold to other parties. He relied on the cases of LWG v GGW [2025] KEHC 18818 (KLR) and PWK V JKG [2009] KEHC 3772 (KLR) and argued that property acquired before the marriage cannot form part of matrimonial property.

33. He stated that he did not own neither was he aware of any properties in Utawala as alleged by the applicant. He stated that he acquired Plot No.911 through succession in the estate of his late mother, hence this is not a part of matrimonial property. It was his submission that parcel number Kakindu/Gategi xxx is still under adjudication and a title document for that property has never been issued. He also relied on the case of JOO v MBO; Federation of Women Lawyers (Intended Interested Party); Law Society of Kenya & 3 others (Intended Amicus Curiae) (supra) and PNN v ZWN (Civil Appeal 128 of 2014) [2017] KECA 753 (KLR). He insisted that the applicant's contribution must be demonstrated towards acquisition and improvement of the named properties before division is considered. He proposed that the matrimonial home in Gaturi/Githimu/xxxx be declared as the only matrimonial property and be divided in the ratio of 70:30 in favour of the respondent.

Issues for Determination

34. Issues for determination are:
1. What constitutes matrimonial property in this case; and
 2. How should the matrimonial property be divided?

Analysis and Determination

35. Matrimonial property is defined under section 6 (1) of the [Matrimonial Property Act](#) 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.” (Emphasis added)

36. Section 14 of the [Matrimonial Property Act](#) provides as follows:

- “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 added)

37. It is an uncontested fact that the marriage between the applicant and respondent was solemnized on 05th December 1987 and it was dissolved on 06th October 2023. The marriage lasted 35 years, 10 months



and 1 day. During that period, between 1990 and 2019, some properties were acquired and the parties gave varying lists of what they considered to be matrimonial property, as follows:



	Applicant	Respondent
1.	Kwale/Kidiani/xxx	Motor vehicle registration number KAR xxxP Peugeot registered in his name.
2.	Plot No.xxx with a 3 bedroomed house on it	Motor vehicle registration number KAK xxxH Peugeot 504 registered in his name.
3.	M/V Peugeot 504 reg. No. KAK xxxH	Land parcel No. Gaturi/Githimu/xxxx is jointly owned with the applicant
4.	Utawala Plots bought through Bedan Syoki	
5.	Toyota Hilux pick-up reg. No. KAR xxxP	
6.	Gategi Plot No.xxxx	
7.	Mbeti Gachoka 3 acre piece of land xxxx	
8.	Gaturi/Weru/xxxx	
9.	Gaturi/Weru/xxxx	
10.	Gaturi/Githimu/xxxx- matrimonial home	
11.	Peugeot KAR xxxP	
12.	Gategi Plot No.x	
13.	Nairobi LR/xxx/11095/69 in South C	
14.	Gaturi/Githimu/xxxx	
15.	Lorry Isuzu KAS xxxM	
16.	Lorry Isuzu KAW xxxG	
17.	Tumaini Brighten Medical Center, 3 acre piece of land in	



38. Through his replying affidavit, the respondent explained that he acquired the properties named by the applicant through his own efforts and the applicant did not contribute to their acquisition in any way. This is the reason why he took the liberty of selling some of these properties and he provided proof of such disposal through his replying affidavit. In his testimony, he stated that he did not have to ask for the applicant's consent before disposing of the properties by way of sale.
39. The first step in this discussion is to identify the nature of the properties in issue. Any properties which were jointly owned (irrespective of the contribution of either spouse) are defined as matrimonial property under Section 6 (1) (c) MPA.
40. Thus, going by the provisions of the *Matrimonial Property Act*, the jointly owned properties sold by the respondent without involving the applicant definitely formed matrimonial property. Under Section 14 (b) there is a rebuttable presumption that the parties held equal beneficial interests therein. This is easily resolved by a 50:50 accounting and distribution.
41. In cases where the properties were registered in the name of the respondent alone but were acquired during the marriage, the presumption in law is that he was holding them in trust for the applicant as his then spouse. Presumptions are rebuttable where rebutting evidence is adduced and satisfies the court.
42. Regarding how the property should be distributed, the court is bound to consider the contribution of both parties to acquisition of the matrimonial property. Unless there exists a pre-nuptial agreement, section 7 of the *Matrimonial Property Act* provides that matrimonial property should be divided according to each party's contribution. The provision is as follows:
- “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.”
43. Under section 2 of the *Matrimonial Property Act*:
- ““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;”
44. The delicate question now, is how to assess the contribution of either spouse towards the acquisition of the properties in question. Contribution is deemed to be both monetary and non-monetary. Thus the challenge is to attach value to non-monetary contribution.
45. The applicant's case is that for a period of 7 years since the start of the marriage, she was engaged in formal employment as a registered nurse. During that time, she said, she took out loans and contributed towards purchase of the land on which they built their matrimonial home, Gaturi/Githimu/xxxx. She demonstrated this through her bank statements. She stated that she was forced to leave formal



employment to accompany the respondent who was relocating abroad for work. By that time, they had 2 children and when they moved to Botswana, the respondent continued working while she was forced by circumstances to be the children's primary parent. Between the respondent's tour of duty in Botswana and Namibia, the applicant spent 11 years and she worked briefly before the respondent asked her to return to Kenya and take care of their properties and businesses.

46. She stated that she did so and that she single-handedly managed development of the properties including supervising construction, managing staff, caring for the farm and livestock and still raising the children as the respondent remained away and in formal employment. This no-monetary contribution counts as substantive contribution in matrimonial property division.
47. The respondent denied forcing the applicant to leave formal employment and stated that she left work because of pregnancy complications. He further denied that she was doing the tasks described while he was away working. He stated that the properties belong to him alone because he is the one who produced the money to purchase them and that the applicant should not lay claim on any of them. He stated that there is no amount of non-monetary contribution that should give the applicant any right of claim to the properties since she had the capacity to work and make money which she could also contribute towards acquisition and development of the properties.
48. Even if it were true, as argued by the respondent, that the applicant left work due to pregnancy complications, such complications constitute a part of the applicant's overall contribution to family life and nurturing of their offering, and should not be discounted. The time input by the applicant to the family's nurturing must thus be taken as a non-financial or non-monetary contribution since her work life was affected by the pregnancy complications.
49. Article 45(3) of *the Constitution* provides:

“Parties to a marriage are entitled to equal rights at the time of the marriage, during the marriage and at the dissolution of the marriage.”
50. In *Federation of Women Lawyers Kenya (FIDA) v Attorney General; Initiative for Strategic Litigation in Africa (ISLA) (Amicus Curiae)* [2018] KEHC 7130 (KLR), the petitioner, FIDA, moved the constitutional court challenging the constitutionality of section 7 of the MPA, The grounds of challenge were that, in light of Article 45(3) of *the Constitution*, Sec 7 MPA infringes on the rights of women to own property after the dissolution of a marriage, because the section requires women to prove their contribution towards acquisition of matrimonial property, yet the definition of contribution has been expanded in law to include non-monetary contributions. The court declined to find the impugned provision unconstitutional and the matter was escalated the Court of Appeal. In that case, cited as *Federation of Women Lawyers Kenya (FIDA-Kenya) v Attorney General; Initiative for Strategic Litigation In Africa (ISLA) (Amicus Curiae)* [2025] KECA 1588 (KLR), the Court of Appeal held thus:

“The express inclusion in the *Matrimonial Property Act* of non-monetary contributions for purpose of division of matrimonial property was evidently a response to the historical and judicial invalidation of non-monetary contributions. The noble intention was to ensure that division of matrimonial property is fair and equitable. As we understand it, the practical challenge which the appellant says has a discriminatory effect is that while, for instance, it may be easier to produce bank statements and other documentary evidence to establish financial or monetary contribution, it may not be so regarding non-monetary contributions such as provision of household management and childcare. However, at the end of the day, it is a question of evidence and courts are equipped to assess the weight and credibility or



otherwise of the evidence presented, whether documentary or non- documentary, by the parties with a view to determining whether the spouse claiming contribution has discharged his/her burden of proof in that regard. As pronounced by the Supreme Court, the function of any court, in the event that a marriage breaks down, is to “make a fair and equitable division of the acquired matrimonial property guided by the provisions of Article 45(3) of *the Constitution*.” [Emphasis added]

51. In light of the Court of Appeal’s holding, it is clear that the evidentiary burden to prove non-monetary contribution to acquisition of matrimonial property lies on the party alleging it. Once proved, non-monetary contribution will be considered and it will count. However, no court has stated whether monetary contribution outweighs non-monetary contribution, or vice versa. This goes back to the question of whether the proof of non-monetary contribution should infer a direct 50% right over matrimonial property or whether it means more, or less, while reserving the constitutionally conferred equal rights of the spouses.
52. The Supreme Court of Kenya also addressed itself to the meaning of Article 45(3) of *the Constitution* in light of the question of contribution of spouses to matrimonial property. This was in the case of *JOO v MBO; Federation of Women Lawyers (FIDA Kenya) & another (Amicus Curiae)* (supra), where it held as follows:

“Equality of parties to a marriage had largely been interpreted and construed in two ways. On the one hand, an interpretation of article 45(3) of *the Constitution* had been construed to mean a division of matrimonial property down the middle through the literal application of the 50:50 division ratio. Proponents of that argument largely opined that since non-monetary contribution could not be quantified but was equally important, a split right in the middle would be more appropriate. The second approach was that ‘equal’ as provided for under article 45(3), meant that a party obtained an equivalent of what one contributed, monetarily or otherwise.

Article 45(3) of *the Constitution* underscored the concept of equality as one that ensured that there was equality and fairness for both spouses. Equality and fairness were therefore one and intertwined. Equality also underscored the concept that all parties should have the same rights at the dissolution of a marriage based on their contribution, each party’s contribution to the acquisition of matrimonial property could not have been done on an equal basis as a party could have significantly contributed more in acquiring property financially as opposed to the other party.

Equity denoted that the other party, though having not contributed more resources to acquiring the property, could have nonetheless, in one way or another, through their actions or deeds, provided an environment that enabled the other party to have more resources to acquire the property. That was what amounted to an indirect contribution. Equity therefore advocated for such a party who could seem disadvantaged for failing to have the means to prove direct financial contribution not to be stopped from getting a share of the matrimonial property.”(Emphasis added)

53. Ultimately, it is trite that every case must be tried based on its unique set of facts (see *Francis Njoroge v Virginia Wanjiku Njoroge*, Nairobi Civil Appeal No. 179 of 2009).
54. In the present case, the applicant leans on the argument that she provided both monetary and non-monetary contribution; Monetary contributions were towards acquisition of the property where the matrimonial home is built; and non-monetary contribution were made regarding acquisition of



all the other properties during the marriage. She also claimed non-monetary contribution during construction of the matrimonial home because, even though she did not inject money into the project, she was overseeing its construction while the respondent provided money but he was away and not present in terms of oversight.

55. At the same time, she stated that she cared for all the other properties, maintained and developed them although she did not have money. Throughout the marriage, only one property, the matrimonial home, is in fact in the joint names of the applicant and the respondent. The rest are in the respondent's name or in the names of other people. On the aspect of non-monetary contribution, the court in the case of *PWK v JKG* (supra) held:

“Where the disputed property is not so registered in the joint names of the spouses but is registered in the name of one spouse, the beneficial share of each spouse would ultimately depend on their proven respective proportion of financial contribution either direct or indirect towards the acquisition of the property. However, in cases where each spouse has made a substantial but unascertainable contribution, it may be equitable to apply the maxim equality in equity while needing the caution of Lord Pearson in *Gissing v Gissing* [1970] 2 ALL ER. 780 Pg 788.”(Emphasis added).

56. The court is now faced with the duty of assessing the weight of this non-monetary contribution by the applicant, vis a vis the respondent's monetary contribution which is established and is undisputed. The applicant's functions of
- (a) giving birth to and taking care of three children (now adults) as the primary parent for most of the duration of the marriage;
 - (b) her proved role in overseeing the development of the properties while the respondent was away;
 - (c) doing farm work including caring for crops and livestock both for cash and sustenance; and
 - (d) maintaining the matrimonial home and all other properties as the respondent worked in formal employment in and out of the country, which role gave the respondent space, time and peace of mind to acquire more properties during the marriage.

All these count towards significant contribution to acquisition of the matrimonial property.

57. It is noted that some of the matrimonial properties may no longer available for division herein as stated by the respondent. The applicant stated that as at January 2024, the motor vehicles were not yet transferred to the alleged purchasers whom the respondent had sold them to. Some of the properties are also not registered in the name of the respondent. The applicant did not avail details of Utawala Plots bought through Bedan Syoki as alleged and the respondent denied knowledge of these properties. It is also noted that Tumaini Brighten Medical Center sits on leased property not belonging to the respondent. However, the business is in the name of the respondent and it was started during subsistence of the marriage hence proceeds thereof are matrimonial property and the applicant is entitled to a share in it.

Disposition

58. In light of all the foregoing, the OS succeeds and orders are hereby made in the following terms:
1. A declaration is issued that the following properties together with all buildings and developments thereon, were acquired and developed through the joint funds and efforts of



the Applicant and Respondent during their marriage and they are, therefore, matrimonial property;

1. Kwale/Kidiani/xxx
 2. Plot No. xxx with a 3 bedroomed house on it
 3. M/V Peugeot 504 reg. no. KAK xxxH
 4. Toyota Hilux pick-up reg. no. KAR xxxP
 5. Gategi Plot No.xxxx
 6. Mbeti Gachoka 3 acre piece of land xxxx
 7. Gaturi/Weru/xxxx
 8. Gaturi/Weru/xxxx
 9. Gaturi/Githimu/xxxx- matrimonial home
 10. Peugeot KAR xxxP
 11. Gategi Plot No. 1
 12. Nairobi LR/xxx/11095/69 in South C
 13. Gaturi/Githimu/xxxx
 14. Lorry Isuzu KAS xxxM
 15. Lorry Isuzu KAW xxxG
 16. Proceeds from Tumaini Brighten Medical Center,
2. No order can be made regarding the following properties since their descriptions are vague and identities unascertained or unascertainable from the evidence:
1. 100 X 100 Plot behind the Medical facility separated by a murram road and the developments thereon comprising of a residential home where the Respondent Resides.
 2. 3 Acres parcel of land at Makima next to the Market along Muriru Road towards Thiba;
 3. Borehole project standing on a One (1) Acre parcel of land in Makima jointly owned by the Petitioner and Respondent;
 4. Proceeds from the Borehole project on One (1) Acre parcel of land in Makima.
3. An order is hereby made that the applicant is or was entitled to at least a 50% share of all the properties named in order (1) herein above, save for property title number Gaturi/Githimu/xxxx. To this end, the respondent is ordered to account for and transfer at least 50% of the proceeds from the sale of all the properties named under paragraph 13 of his Replying Affidavit to the applicant, which properties he sold to 3rd parties.
4. Given that the respondent has acknowledged having singlehandedly sold most of the matrimonial property, without indicating the amount paid to the applicant in recognition of



her contribution, the applicant is entitled to 100% share in the matrimonial home sitting on land parcel number Gaturi/Githimu/xxxx.

This order is made on account of her monetary and non-monetary contribution to it. To this end, the respondent is ordered to transfer his interest in the same to the applicant within 60 days of this judgment;

5. If at the end of 60 days, the respondent shall not have executed the relevant documents to enable transfer of 100% interest in the land parcel number Gaturi/Githimu/xxxx by the applicant, the applicant shall make available the requisite transfer document to the Deputy Registrar Embu High Court to execute them in place of the respondent within 7 days.
6. No order as to costs is made herein.

59. Orders accordingly.

DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 26TH DAY OF FEBRUARY, 2026.

.....

R. MWONGO

JUDGE

Delivered in the presence of:

1. Kimanzi for the Respondent
2. Onyiego – Online for the Petitioner
3. Francis Munyao - Court Assistant

