



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL SUIT NO. E013 OF 2023 (OS)

ALLAN MBOGO KARIAVO NKONGE
PLAINTIFF
VERSES
MILLICENT MANET WANJIKU KINYUA
DEFENDANT

JUDGEMENT

1. In his Originating Summons dated 2nd November 2023 the Plaintiff prays for orders:-
 - (a) That it be declared that the following properties were acquired through the sole effort/contribution of the Plaintiff and hence are exclusively owned by him, that is:-
 - (i) Apartment of title No. **Dagoretti/Riruta/3484/6**
 - (ii) Motor vehicle registration number **KCA 804D.**
 - (b) That this court be pleased to make any other orders as the interest of justice might be.

2. The same is premised on the grounds thereof and the affidavit in support sworn on the same date.
3. The Respondent by way of defence filed her replying affidavit sworn on 13th June 2024.
4. The Plaintiff on the other hand and in response to the same filed a supplementary affidavit sworn on 9th October 2024.
5. What can be clearly gleaned from the rival affidavits and is uncontested is that their marriage broke down and divorce proceedings resulted in the decree *nisi* issued on 14th July 2023.
6. The said marriage was blessed with two issues currently residing with the Defendant.
7. The two properties which are in contest are Dagoretti/Riruta/3484/6 and motor vehicle KCA 804D.
8. The defendant in her replying affidavit deponed that there were other properties jointly registered between the Plaintiff and her parents. The same was not denied by the Plaintiff.
9. When the matter came up for directions the Court directed the parties to file written submissions which they complied.
10. In his submissions the Plaintiff claimed that the above two properties and in particular the apartment were obtained by way of purchase from Stanley Mngaruthi Nkonge and Catherine Gicuku Nkonge and the same transferred to him

on 28th December 2017. That he paid a sum of Ksh.8,700,000 as a purchase consideration.

11. He further submitted that he purchased the motor vehicle in August 2014 solely and that is why just like the apartment the same is registered in his name.
12. On her side the Defendant argued that the apartment was a gift from their parents, (her in laws) and that the Plaintiff did not purchase the same. That the vehicle for instance was a gift from her in laws after delivery of her children.
13. She further deponed and submitted that she has all along taken care of their two children for instance between the years 2010 and 2013 when the Plaintiff was in and out of rehabilitation in South Africa, China and Nairobi.
14. She therefore prays that the said properties be considered matrimonial and be divided equally.

ANALYSIS AND DETERMINATION

15. I have carefully perused the rival affidavits as well as the submissions and the authorities cited herein which I need not reproduce them here.
16. The basic issue to be determined is whether the two properties though registered in the Plaintiff's name can be termed as matrimonial.
17. The parties have each cited various authorities with the leading common authority of **JOO V MBO (PETITION 11 OF 2020 (2023) KESC 4 (KLR)** in which the Supreme Court of Kenya emphasized that each case is to be dealt

with independently and that there was no blanket 50:50 contribution. In other words, every party must prove its contribution towards the acquisition of the property.

18. It is the Plaintiff's case that he purchased the apartment from his parents and he produced a transfer document to that effect. There was no, as rightly submitted by the Defendant, any sale agreement indicating that he purchased it from them.
19. If indeed there was such a sale, then there was nothing difficult in exhibiting the same and indicating paper trail on how the sum of Kshs. 8.7 million exchanged hands between him and her parents.
20. At any rate there is no evidence of any stamp duty paid or any other outgoings in terms of conveyancing processes.
21. The same goes with the motor vehicle. Mere exhibiting of the logbook in my view is insufficient. In any case just like the apartment the acquisition was done during coverture.
22. The court has had a look at the other properties specifically Dagoretti/Riruta/5382 and 5853 respectively in which the Plaintiff is a co - registered owner with I suppose his parents. In my view this lends credence to the argument that the contested Dagoretti/Riruta 3484/6 was a gift from the Plaintiff's parents and therefore forms part of their matrimonial property.
23. There was no contestation on the part of the Plaintiff to the above assertion by the Defendant.

24. Taking the totality of my above findings I hold that the Defendant who has been staying with their children as well as using the above motor vehicle for family purposes is entitled to 50% thereof considering that all were acquired during coverture and that there was no evidence of any direct purchase whether monetary or otherwise by the Plaintiff.
25. Despite the fact that the property was not transferred in the parties' joint names by the Plaintiff's parents the Defendant by virtue of taking care of the home as well as the children and when the Plaintiff was undergoing rehabilitation, an issue which he has not denied, falls within the findings by Lord Justice Fox in **Burns .v. Burns (1984) 1 ALL ER 244**, that is ;
- “Contributing to the running of and welfare of the home and easing the burden of the spouse paying for the property and caring for the children and the family at large as the other spouse works to earn money to pay for the property. “***
26. It is also not contested that the Defendant has been residing with the children in the above property and the Plaintiff has since moved to another abode.
27. It is also noted that since the Defendant is entitled to 50 % thereof it goes without say that she will be entitled to 50% of the Plaintiff's share in any property held by the Plaintiff and registered jointly with other persons. In other words, and by way of example if he has shares in

Dagoretti/Riruta/5382 and 5853 then the Defendant will be entitled to the Plaintiff's share therein.

28. In the premises the court finds and directs that:

- (a) The Plaintiff and the Defendant are entitled to 50% shares each in Dagoretti/Riruta/3484/6 and motor vehicle registration number KCA 804D.**
- (b) The Defendant is entitled to 50% share of any property jointly registered as at now, in the names of the Plaintiff and any other persons.**
- (c) The parties be at liberty to agree on the mode of sharing out the said properties including but not limited to outright sale and sharing out the proceeds equally.**
- (d) Being a family matter, each shall meet their respective costs.**

**Dated signed and delivered via video link at Nairobi
this 19th day of March 2026.**

**H K CHEMITEI
JUDGE**