



**CMP v IMW (Matrimonial Cause 38 of 2019)  
[2026] KEHC 3576 (KLR) (Family) (18 March 2026) (Judgment)**

Neutral citation: [2026] KEHC 3576 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
MATRIMONIAL CAUSE 38 OF 2019  
H NAMISI, J  
MARCH 18, 2026  
IN THE MATTER OF DIVISION OF MATRIMONIAL PROPERTY  
AND  
IN THE MATTER OF THE MATRIMONIAL PROPERTY ACT, 2013**

**BETWEEN**

**CMP ..... PLAINTIFF**

**AND**

**IMW ..... DEFENDANT**

**JUDGMENT**

1. Before the Court is Originating Summons dated 23 May 2019. The Applicant approaches this Court seeking the equitable division and distribution of matrimonial property following the dissolution of her marriage to the Respondent. The marital union between the parties was formally dissolved by a decree of the Milimani Chief Magistrate's Court in Divorce Cause No. 887 of 2017, with a Decree Nisi issued on 13 July 2022, which was subsequently made absolute.
2. The Applicant seeks declarations that specific immovable properties and motor vehicles were acquired and developed through joint funds and efforts during the subsistence of the marriage, thereby entitling the parties to equal beneficial shares. Furthermore, the Applicant seeks declarations that the Respondent's unilateral transfer of several motor vehicles to third parties during the pendency of the matrimonial dispute was executed in bad faith with the express intention of defeating her proprietary claims. The Applicant contends that these transfers are void ab initio for lack of spousal consent as mandated by statute.



3. Conversely, the Respondent vehemently opposes the Summons, primarily asserting that he was the sole financial contributor to the acquisition of the properties. He further contests the legal classification of specific assets, arguing that property acquired prior to the formal solemnization of their marriage falls outside the ambit of the *Matrimonial Property Act*. The Respondent also defends the transfer of the motor vehicles, asserting absolute ownership and denying any fraudulent intent.

### **The Applicant's Case**

4. The Applicant's case is grounded on the assertion that the parties commenced cohabitation as husband and wife in September 2008 in Fedha Estate, Nairobi. This cohabitation culminated in a formal solemnization of their marriage on 7 September 2013 at the Consolata Shrine, Nairobi. The union produced two children. The Applicant testified that she also partook in the upbringing of the Respondent's two children from a previous relationship, who resided with them since 2009. The Applicant avers that on 25 November 2017; the marriage irretrievably broke down when the Respondent forcibly evicted her from the Syokimau matrimonial home.
5. In respect of the Syokimau Property (L.R. No. 12715/11076), the Applicant provided evidence that it was purchased as a vacant plot in November 2014 for a consideration of Kshs 1,750,000/= from one Naomi Mwendu Kaisha. To finance this acquisition, the Applicant adduced evidence of a loan facility of Kshs 800,000/= procured from the Commercial Bank of Africa through her then-employer, Safaricom Limited. She further testified to issuing a cheque of Kshs 500,000/= against her Co-operative Bank account on 4 December 2014 as a deposit for the property. The Agreement for Sale dated 17 August 2015 and the subsequent Transfer documents were executed in the joint names of both the Applicant and the Respondent.
6. For the development of the Syokimau property, the Applicant asserted that a joint account initially opened in 2013 for their nuptials, was reactivated in 2015. She testified that she routinely made deposits into this account from her enterprise, Shapes Boutique Investment, and that these funds were utilized to construct the four-bedroom maisonette to which the family relocated in July 2017.
7. Regarding the Joska Property (Mavoko Town Block 3/15208), the Applicant stated that it was purchased in February 2011 for Kshs 200,000/= during their period of cohabitation. She contends that this property is jointly registered in both their names as a direct result of their joint financial contributions and shared matrimonial vision.
8. On the issue of the Motor Vehicles, the Applicant asserts that vehicles KCB 461N, KCF 699V, and KCD 578T were acquired using joint family funds and were intended for family use, despite being registered solely in the Respondent's name. Specifically, she traced the acquisition of the Nissan Dualis KCF 699V to an insurance compensation payout. Following an accident involving her previous vehicle, KBX 806X, in October 2015, she received a settlement of Kshs 610,000/= from Resolution Insurance in January 2016. Bank statements adduced into evidence confirm she transferred Kshs 400,000/= to the Respondent's Equity Bank account on 12 January 2016 specifically to fund the purchase of KCF 699V.
9. The Applicant accuses the Respondent of fraudulently alienating these vehicles pendente lite to defeat her matrimonial claims. Motor vehicle KCB 461N was transferred to Star Global Systems Ltd, a company in which both parties were directors. Motor vehicle KCD 578T was transferred to the Respondent's cousin, Mercy Nyokabi Otieno, on 6 January 2018, and subsequently to Bella Quattro Enterprises. Motor vehicle KCF 699V was transferred to Marianna Wausi Muli, the named co-respondent in the divorce proceedings, and later to Yvone Brenda Ogera, the Respondent's counsel in a related Children's Case.



## The Respondent's Case

10. The Respondent's defence is anchored on a rigid denial of the Applicant's financial contributions, asserting that he was the primary breadwinner who solely financed the family's lifestyle and asset acquisitions. Relying on section 107 of the *Evidence Act*, the Respondent argues that the Applicant failed to discharge the burden of proving her alleged contributions on a balance of probabilities.
11. Addressing the Joska Property, the Respondent raises a strict legal defence under section 6(1)(c) of the *Matrimonial Property Act*. He argues that because the property was purchased in February 2011, more than 2 years prior to the solemnization of their marriage on 7 September 2013, it falls outside the statutory definition of matrimonial property. While acknowledging that the title deed bears both their names, he characterizes this joint registration as a mere act of spousal benevolence rather than an acknowledgment of the Applicant's financial contribution.
12. Concerning the Syokimau Property, the Respondent concedes that the sale agreement and transfer documents are in joint names. However, he maintains that he was the principal financier, having contributed Kshs 1,750,000/= toward its acquisition. He avers that any financial contribution made by the Applicant was subsequently reimbursed to her in cash, although he admitted during cross-examination that he lacked documentary evidence to substantiate this reimbursement. The Respondent further argues that the joint Co-operative Bank account was utilized solely to monitor the Applicant's boutique business, not for pooling construction funds. He submitted extensive receipts from 2016 to 2019 to demonstrate that he personally supervised and financed the construction of the home, continuing improvements long after the Applicant vacated in November 2017. Additionally, he contends that the Syokimau property cannot be declared matrimonial property because the legal transfer remains unregistered due to pending financial issues with the original vendor.
13. Regarding the Motor Vehicles, the Respondent produced Equity Bank statements and importation documents dating to October and November 2014/2015 to prove that he independently sourced, imported, and paid for KCB 461N, KCF 699V, and KCD 578T. He asserts that because he was the sole registered owner, he possessed the unencumbered legal right to dispose of the vehicles as he saw fit. In response to the Applicant's evidence of the Kshs 400,000/= transfer, the Respondent testified that this sum was not a contribution toward KCF 699V, but rather the repayment of a prior personal loan he advanced to the Applicant to resolve an issue involving her brother. He further noted that the importation documents for KCF 699V predate the Applicant's receipt of her insurance compensation in January 2016, rendering her timeline implausible.

## Analysis & Determination

14. Upon evaluation of the pleadings, the documentary exhibits, and the rival submissions, this Court isolates the following definitive issues for determination:
  - a. Whether the properties constitute matrimonial property;
  - b. Whether the Applicant has discharged the burden of proving her contribution—both monetary and non-monetary—to the acquisition and development of the immovable properties;
  - c. Whether the motor vehicles constitute matrimonial property held in trust, and whether the Respondent's unilateral alienation of these assets to third parties violated the spousal consent provisions of section 12 of the Act



- d. Whether the Court possesses the equitable jurisdiction to pierce the corporate veil to trace matrimonial assets transferred to a corporate entity *pendente lite*.
- e. What are the appropriate final reliefs and orders?

### **, Pre-Marital Acquisition, and Constructive Trust**

15. The Respondent argues that the Joska Property, acquired in February 2011, cannot be matrimonial property because the parties were not formally married until September 2013, relying on the strict wording of Section 6(1)(c) of the Act.
16. This argument presents a narrow and formalistic interpretation of the law that fails to account for equitable doctrines. While section 5 states that property acquired before marriage does not generally form part of matrimonial property, this is subject to the provisions of section 6, and more importantly, subject to the principles of equity.
17. The Supreme Court addressed the proprietary rights of parties in long-term cohabitation in *MNK v POM KESC 2 (KLR)*. In that case, while the Court maintained strict parameters for legally presuming a marriage, it unequivocally affirmed the application of the doctrine of constructive trust in cohabitation scenarios. The Court held that where parties cohabit and jointly contribute to the acquisition or development of property, their conduct implies a shared intention to hold the property jointly, giving rise to a constructive trust regardless of the absence of a formal marriage certificate at the time of purchase. This position was echoed in *Godwilly v Manochi KEHC 7102 (KLR)*, where it was ruled that property acquired or jointly developed during long-term cohabitation attracts full legal consequences under the Act, granting beneficial interests to the contributing partner.
18. In the present matter, it is not in dispute that the Applicant and Respondent commenced cohabitation in September 2008 and operated as a unified family unit, culminating in their 2013 formal marriage. The Joska property was acquired during this continuous period of cohabitation. Crucially, the property is registered in the joint names of both the Applicant and the Respondent. The act of joint registration serves as definitive evidence of the parties' common intention to hold the property as joint beneficial owners. The subsequent formalization of their marriage in 2013 merged this jointly held asset into the matrimonial estate. Therefore, I find that the Joska property constitutes matrimonial property capable of division by this Court.

### **Assessment of Contribution and Beneficial Interests in Immovable Properties**

19. The distribution of the immoveable properties turns on the application of section 7 and section 14 of the Act, read alongside the Ogentoto doctrine.
20. Section 14(b) provides a critical statutory presumption:

Where matrimonial property is acquired during marriage... in the names of the spouses jointly, there shall be a rebuttable presumption that their beneficial interests in the matrimonial property are equal.
21. The burden of proof to dislodge this presumption rests squarely on the party asserting a disproportionate share, who must present cogent and compelling evidence.
22. Regarding the Joska property, as established, this property is registered jointly. The Respondent asserts that he provided the entire Kshs 200,000/= purchase price and that the joint registration was merely an act of benevolence. However, the legal presumption of equal beneficial interest under section 14(b) cannot be defeated by mere verbal assertions of benevolence. The Respondent failed



to adduce any documentary evidence to prove sole financial contribution, nor did he disprove the Applicant's indirect contributions during their cohabitation. Applying the standard of proof on a balance of probabilities, the Respondent has failed to rebut the presumption. The Court declares that the Applicant holds a 50% beneficial interest in the Joska property.

23. The Syokimau property served as the matrimonial home, triggering the highest level of statutory protection under section 6(1)(a) of the Act. The Sale Agreement and the Transfer documents were executed jointly. This again activates the section 14(b) presumption of equal sharing.
24. The Respondent attempted to rebut this by presenting construction receipts bearing his name and claiming that he reimbursed the Applicant for any contributions. I find the defence of reimbursement entirely lacking in merit. Claims of reimbursement for spousal contributions to matrimonial assets require strict documentary proof, which the Respondent admitted he did not possess. A spouse's contribution to the acquisition of a family home is an investment in equity, not a simple commercial loan to be casually refunded in undocumented cash.
25. Conversely, the Applicant presented robust evidence of direct financial contribution. She secured an Kshs 800,000/= loan from her employer and produced evidence of a Kshs 500,000/= cheque drawn from her Co-operative Bank account towards the property. Furthermore, the existence of the joint Co-operative Bank account, into which the Applicant deposited proceeds from Shapes Boutique Investment, demonstrates a pooling of resources.
26. Beyond her financial injections, the Court must weigh the Applicant's non-monetary contributions. Section 2 requires the Court to recognize domestic work and childcare. The Applicant managed the matrimonial household from 2008 until her eviction in 2017, raising not only the children of the marriage but also the Respondent's children from a prior relationship. As the Supreme Court articulated in Ogentoto case, such non-monetary contributions are the bedrock that enables the other spouse to focus on the economic acquisition of property.
27. The Respondent's argument that the Syokimau property cannot be divided because the transfer is unregistered due to pending financial issues with the vendor is legally mischievous. The parties took physical possession, constructed a substantial four-bedroom maisonette, and resided therein. Under the equitable doctrine of part performance, the execution of the transfer forms and taking of possession confers an equitable proprietary interest upon the spouses. A litigant cannot rely on his own deliberate failure to finalize administrative registration to defeat a spouse's legitimate claim.
28. Evaluating the totality of the evidence—the Applicant's direct financial contributions, her extensive non-monetary contributions over 9 years, and the joint registration of the acquisition documents—the Court finds that an equal division is the most just and equitable outcome. The Respondent has failed to rebut the presumption under Section 14(b). The Applicant is entitled to a 50% share of the Syokimau property.

### **Unilateral Alienation of Motor Vehicles, Spousal Consent, and Piercing the Corporate Veil**

29. The Applicant seeks a declaration of trust over motor vehicles KCB 461N, KCF 699V, and KCD 578T, and challenges their transfer to third parties pendente lite.
30. Section 14(a) provides that where property is acquired during marriage in the name of one spouse, there is a rebuttable presumption that the property is held in trust for the other spouse. The Respondent argues that because he sourced and registered the vehicles in his name, he possessed absolute ownership. This argument fundamentally misapprehends the law of trusts in matrimonial property.



31. The Applicant provided compelling evidence regarding KCF 699V Nissan Dualis. She demonstrated that following the accident of her vehicle KBX 806X, she received Kshs 610,000/= from Resolution Insurance. Bank records confirm she transferred Kshs 400,000/= to the Respondent's Equity Bank account on 12 January 2016. The Respondent's assertion that this Kshs 400,000/= was a reimbursement for a personal loan relating to the Applicant's brother is uncorroborated by any evidence and is rejected by this Court. While the Respondent notes that the importation documents for KCF 699V predate the January 2016 transfer, it is common practice in family economics for one spouse to advance capital for an asset, with the other spouse subsequently injecting funds to settle the balance or replenish family reserves. The financial nexus is established, crystallizing the Applicant's beneficial interest in the vehicles.
32. Having established that the vehicles constituted matrimonial property held in trust, the Court turns to the legality of their alienation. Section 12(1) of the Act is unambiguous:

An estate or interest in any matrimonial property shall not, during the subsistence of a monogamous marriage and without the consent of both spouses, be alienated in any form, whether by way of sale, gift, lease, mortgage or otherwise.
33. Recent jurisprudence, notably the decisions in *FWM v PNK (2022) KEHC 10636* and *JKN v JWN & 3 others (2022) KEELC 1428*, has affirmed that any transfer of matrimonial property without the express, informed consent of the spouse is illegal and void ab initio.
34. The timing and recipients of the transfers expose the Respondent's mala fides. The transfer of KCF 699V to Marianna Wausi Muli, the Respondent's alleged mistress and co-respondent in the divorce cause, and the transfer of KCD 578T to the Respondent's cousin, Mercy Nyokabi Otieno, occurred concurrently with the breakdown of the marriage and the initiation of divorce proceedings. Transfers executed with the requisite intention to defeat a spouse's financial relief claim are subject to being set aside. The Court is satisfied on a balance of probabilities that these transfers were sham transactions designed to dissipate the matrimonial estate.
35. The Respondent transferred KCB 461N to Star Global Systems Ltd, attempting to utilize corporate personality to shield the asset. The Court of Appeal recently confronted this exact machination in *GKW v RNK KECA [2025] 1475*. The Court unequivocally held that the corporate veil can and will be pierced in matrimonial disputes if a company is utilized as a warehouse to hide matrimonial assets and frustrate the equitable division of property. The Court noted that clever paperwork cannot erase a spouse's beneficial interests and that corporate formalities must yield to the constitutional guarantee of equality under Article 45(3).
36. Star Global Systems Ltd is a closely held entity in which both the Applicant and Respondent are directors. The Respondent's unilateral transfer of KCB 461N to this company was a deliberate manoeuvre to alter the property's character from a matrimonial asset to a corporate asset. Applying the binding precedent in *GKW v RNK*, this Court pierces the corporate veil of Star Global Systems Ltd. I declare that motor vehicle KCB 461N remains matrimonial property subject to division.

## **Disposition**

37. Having determined that the immovable properties and the motor vehicles constitute matrimonial property, and that the Applicant is entitled to a 50% equitable share, the Court must fashion appropriate remedies.



38. For the immovable properties, an order for valuation and subsequent sale or buyout is the most equitable remedy to ensure a clean break between the parties.
39. Regarding the motor vehicles, ordering the physical tracing and restitution of depreciating chattels from third parties, some of whom are not joined in this suit, would be legally cumbersome and practically inefficient. The law of equity provides a remedy: where a trustee unlawfully alienates trust property, the beneficiary is entitled to compensation for the value of their lost share. Therefore, the Respondent shall be ordered to reimburse the Applicant a sum equivalent to 50% of the market value of the three vehicles as at the date he unlawfully transferred them.
40. Accordingly, this Court enters judgment in favour of the Applicant and makes the following orders:
- i. It is hereby declared that the property known as Land Reference Number 12715/11076 (Original Number 12715/468/10) Syokimau, and the property known as Title Number Mavoko Town, Block 3/15208 (Joska), are matrimonial properties jointly and beneficially owned by the Applicant and the Respondent in equal shares (50:50).
  - ii. The two properties aforesaid shall be valued by a mutually agreed, independent registered valuer within forty-five (45) days of this Judgment. The costs of valuation shall be borne equally by the parties.
  - iii. Upon the filing of the valuation report, the Respondent shall have the first option to buy out the Applicant's 50% share within ninety (90) days. In the event of default, the properties shall be sold by public auction or private treaty, and the net proceeds distributed equally (50:50) between the Applicant and the Respondent. The Deputy Registrar is authorized to execute any transfer documents should either party fail to cooperate.
  - iv. It is declared that motor vehicles registration numbers KCB 461N, KCF 699V, and KCD 578T were matrimonial properties held in trust by the Respondent for the joint benefit of the spouses pursuant to section 14(a) of the Matrimonial Property Act, 2013.
  - v. Respondent is hereby ordered to pay the Applicant a sum equivalent to 50% of the fair market value of motor vehicles KCB 461N, KCF 699V, and KCD 578T, assessed historically as at the dates of their respective unlawful transfers. The parties shall appoint a joint motor vehicle valuer to determine this historical value within forty-five (45) days.
  - vi. Should the Respondent fail to remit the compensation sum for the motor vehicles within sixty (60) days of the adoption of the valuation report, the amount shall attract interest at court rates until payment in full.
  - vii. Recognizing the nature of family litigation and the principles of equity, each party shall bear their own costs for this suit.

**DATED AND DELIVERED AT NAIROBI THIS 18 DAY OF MARCH 2026**

**HELENE R. NAMISI**

**JUDGE**

Delivered on virtual platform in the presence of:

For Plaintiff/Applicant: Ms Ithondeka

For Defendant/Respondent: Mr Odhiambo

Court Assistant: Lucy Mwangi

