



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**FAMILY DIVISION**  
**CIVIL SUIT NO. 71 OF 2013 (O.S.)**

**MARGARET NYAMBURA MWANGI .....**  
**APPLICANT**

**VERSUS**

**JOSEPH NJOROGE MUGENDA .....**  
**RESPONDENT**

**JUDGEMENT**

1. This judgment relates to the Originating summons dated **17<sup>th</sup> October, 2013** filed by the Applicant, **Margaret Nyambura Mwangi** seeking for **ORDERS THAT:**

**a) It be declared that the properties listed hereunder were acquired by joint funds and effort of the Applicant and the Respondent, and are jointly owned by the Applicant and the Respondent:**

- i. Ruiru/Kiu Block 1/336.**
- ii. Ruiru/Kiu Block 1/337.**
- iii. Ruiru/Kiu Block 1/314.**
- iv. Ruiru/Kiu Block 6/1276.**
- v. Ruiru/Kiu Block Plot No. 200.**

**vi. Lucky Summer Plot Number 57.**

**vii. Lucky Summer Plot Number 59.**

**viii. House No. 1462 KIU River known as  
Sukari  
Ranch.**

**b) An order do issue declaring that 50% or such other or higher proportion of the matrimonial properties aforesaid is held by the Respondent in trust for and for the beneficial interest of the Applicant.**

**c) An order do issue declaring that the Respondent is accountable to the Applicant in respect of all the income derived from the said properties and applied to the Respondent exclusive use.**

**d) This honourable court be pleased to order that the properties and the income aforesaid be settled in proportions aforesaid or as the court may order.**

**e) In the alternative that the above-mentioned properties, be disposed of by way of sale and the proceeds equitably divided between the Applicant and the Respondent or as the court may deem just to order.**

**f) The Court be pleased to make further or other orders as the justice of the case may demand.**

**g)The costs of this summons be awarded to the Applicant.**

2. The application is based the grounds on thereof and supported by affidavit sworn by Margaret Nyambura Mwangi on **17<sup>th</sup> October, 2013** and **6<sup>th</sup> April, 2017**.
3. The application is opposed vide replying affidavit sworn by Joseph Njoroge Mugenda on **11<sup>th</sup> December, 2013**.
4. After several years of applications and counter applications the matter proceeded by way of *Viva Voce* evidence.

**APPLICANT'S CASE**

5. **Margaret Nyambura Mwangi** while relying on her sworn affidavits and witness statements testified that she was once married to the Respondent, Joseph Mugenda. Together, they raised four children who are now all grown up. She explained that they tied the knot in 1980 and made it official in 1997, but their marriage ended in divorce in 2015. That she filed this Suit on **13<sup>th</sup> October, 2013**, and relied on her affidavit of **17<sup>th</sup> October, 2013**, along with her witness statement dated **16<sup>th</sup> November, 2018**.
6. While the case was ongoing, the court allowed her to stay in a house in Kahawa, where she currently lives with her children.
7. During cross-examination, she insisted that several properties were acquired while they were married, which she believes should be considered matrimonial property.

These properties include plots in Lucky Summer, Ruiru and Sukari Ranch.

8. She recounted how she had to leave their home with the children, leaving behind the title documents that are now in the Respondent's hands. Although she admitted she doesn't have any official proof of ownership or financial contributions, she maintained that she played a significant role in supporting the family financially through her businesses and managing the household while Joseph, who was a Civil Servant at the time, took out loans to buy properties.
9. The Applicant also testified that the Respondent ran a business on one of the plots and rented out stalls to other vendors. She herself operated several businesses, including a butchery christened Watamu, which Joseph initially helped her set up with a loan that she later paid back in full. She denied any involvement with certain companies or properties that were claimed to be linked to her and clarified that she never placed caveats on some of the disputed properties.
10. She explained that her goal in previous court proceedings, including a restraining order she obtained in 2006, was to protect their matrimonial assets while waiting for a decision on her share. She pointed out that the majority of the properties were acquired during their marriage and that the Respondent still has control over them.

11. She argued that even though she doesn't have any documents to prove her direct financial contributions, she played a significant role in supporting the family by managing the household and taking care of the children. This support allowed the Respondent to focus on paying off the loans used to buy those properties.
12. She urged the court to fairly divide the marital assets, highlighting that the Respondent does not provide for the children, while she continues to take care of them, including their grandchildren.

### **RESPONDENT'S CASE**

13. He testified that he lives in Githurai 45 and retired from the Kenya Bureau of Standards back in 2005. Nowadays, he spends his time doing small-scale gardening. He relied on his replying affidavit dated **11<sup>th</sup> December, 2013**, his witness statement dated **21<sup>st</sup> September, 2013** and another witness statement from **16<sup>th</sup> July, 2019**, all of which he presented as part of his testimony in court.
14. He also submitted documents listed in his filings from **24<sup>th</sup> September, 2018** and **9<sup>th</sup> April, 2019**, along with a supplementary list from **16<sup>th</sup> July, 2019** and requested the court to accept these as his exhibits.
15. He contested the suit, asking the court to dismiss it, insisting that he was the sole owner of the disputed

properties and that any businesses registered under the Applicant's name were initiated and funded by him.

16. He recounted that they started living together in 1980, officially got married in 1997 and divorced in 2015. He mentioned that when they first met, the Applicant was still a student while he was already working. He claimed he bought the first property in May 1982 and continued to acquire more until 1997. He argued that the Applicant never had a formal job and only began working in the businesses he set up for her, which included butcheries, a café and a cereals business.
17. He explained that while he was employed, he also helped the Applicant with these businesses during weekends and holidays. He added that their children were educated and are now adults with university degrees, noting that by 2006, they had already reached adulthood.
18. When it comes to the properties in question, the Respondent claimed that the matrimonial home is Plot No. **Ruiru/Kiu Block 1/314**, which is registered under his name and where he lives. He also mentioned that **Ruiru/Kiu Block 1/336** is in his name and along with **Block 1/337**, which is registered to the Applicant, he uses them for small-scale farming. He pointed out that **Block 6/1276**, where a restaurant used to operate, is also registered in his name.
19. Additionally, he owns **Lucky Summer Plots No. 57** and **59**, although he sold **Plot No. 59** to someone else back in 1997.

20. He noted that the Applicant currently lives at **House No. 1462** Kahawa Sukari, a place she was allowed to occupy due to a Court order and he insisted that this property doesn't belong to him. He also claimed that the Applicant has other properties in her name, including a Mwajenga Housing plot in Ruiru East and another parcel known as **Ruiru/Kiu/200**, which he said he bought from Mary Njenga.
21. The Respondent firmly denied that the Applicant contributed financially to the purchase of the disputed properties, arguing that she was mainly a housewife while he was the one who funded all the acquisitions through his job. Even though the businesses were registered in the Applicant's name, he maintained that he was the one who started and financed them, leaving her in charge of their management. He further explained that over time, disputes arose between them, including allegations and police complaints made in 2006, but those issues were eventually resolved.
22. He insisted that the Applicant has hidden certain properties and financial details from the court and reiterated that the businesses and investments were solely his. Based on this, he urged the court to dismiss the Applicant's claim and closed his defense case.

### **ANALYSIS AND DETERMINATION**

23. I have carefully considered the application, the responses thereto and the rival submissions filed by the parties.

24. The issues before the court are clear and straight forward as captured by the parties' submissions namely, whether the properties in dispute and are generally registered under the Respondent's names are matrimonial and therefore capable of being split as requested by the Applicant.
25. What I find the parties in agreement is that the properties were generally if not all purchased during coverture and had them registered under the Respondent's name. None of the properties were purchased by the Applicant. She admitted so in her evidence.
26. Her basic contribution it appears was on the businesses, namely butcheries cafes and cereals. These the Respondent stated that he set them up for her and she did not dispute.
27. It was undisputed also that the Applicant essentially took care of the home as well as the children who at the moment are all adults and venting for themselves while the Respondent was in his formal employment. This also gave him time to concentrate on repayment of the loans.
28. The Respondent has alleged that the Applicant has some properties registered under her name but she has chosen not to indicate to the court.
29. Whereas this may or may not be true the best the Respondent would have done is to counterclaim herein or file an independent suit demanding a share of them. For now, I shall hold that the same are mere unproven allegations.
30. What then is the way forward?

31. **Section 6** of the Matrimonial Property Act No. 49 of 2013 describes matrimonial property to mean the matrimonial home or homes, household goods and effects in the matrimonial home or homes and any other immovable and movable property jointly owned and acquired during the subsistence of the marriage.
32. **Section 7** of the Matrimonial Property Act No. 49 of 2013 states 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.
33. **Section 8** of the Matrimonial Property Act No. 49 of 2013 states that where one spouse acquires property before or during the marriage and the property acquired during the marriage does not become matrimonial property, but the other spouse makes a contribution towards the improvement of the property, the spouse who makes a contribution acquires a beneficial interest in the property equal to the contribution made.
34. In **NGV v CNV also known as CHM (Matrimonial Cause 6 of 2021) [2022] KEHC 16645 (KLR) (6 December 2022) (Judgment)**, at paragraphs 46 and 47, the court quoted with authority the case of **TMW vs FMC (2018) eKLR** where the court adopted the definition under **Section 6** of the Matrimonial Disputes Act No. 49 of 2013 to hold that ***for property to qualify as matrimonial property,***

***it must have been acquired during the subsistence of marriage unless agreed by both parties that such property will not form part of the matrimonial property. The burden of proof in law lies with the party alleging that such and such property indeed was acquired during the subsistence of the marriage and therefore constitutes matrimonial property.***

***However, the mere fact that property is acquired during coverture does not automatically entitle each spouse or party a share after dissolution of the marriage. One has to prove contribution whether direct or indirect. The onus of proof, however, is subject to a rebuttable presumption of law under Section 14 of 'Matrimonial Properties Act which provides; '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.'***

35. The Supreme Court of Kenya in **Petition No. 10 of 2020 Joseph Ombogi Ogentoto v Martha Bosibori Ogentoto [2023]** agreed with Echaria case on the principles applied for distribution of matrimonial property. It stated thus:

***“[78] to our minds the finding in Echaria was essentially that a spouse does not acquire any***

***beneficial interest in matrimonial property by fact of being married only and that specific contribution has to be ascertained to entitle such a spouse a share of the property.”***

The court went on to emphasize that the spouse seeking a share in the matrimonial property has to prove the extent of his or her contribution to the acquisition or development of the property. It stated:

***“[83] the guiding principle should be the apportionment and division of matrimonial property may only be done where parties fulfill their obligation of providing what they are entitled to by way of contribution.”***

36. In my view and considering the evidence at hand I find that the Applicant has establish her case on a balance of probabilities. She has shown how she contributed indirectly through the management of the home as well as in the businesses albeit set up by the Respondent. These businesses with the income therefrom which was admitted by the Respondent must have contributed towards the improvement of the home as well as the properties.
37. I also note that were it not for the Respondent’s formal employment and acquisitions of the loans the above properties would not in the circumstances been acquired. So, credit to him.
38. Taking the totality of the evidence before me I find and hold that the Applicant is entitled to 40% of the above properties

which I declare that they are matrimonial and the Respondent 60%.

39. Since the registration of some of them were not very clear I find that all the properties that are registered under the Respondent's name except No. 59 which he already sold in 1997 are declared matrimonial.
40. The parties are at liberty to share the same in the ratio of 40:60 stated above and in the event of any disagreement the same shall be sold by way of public auction and the proceeds less liabilities be shared in the manner directed.
41. **In Conclusion the court hereby declares the following properties matrimonial, namely:-**
  - (I) (a) Ruiru/ Kiu Block 1/ 336.**
  - (b) Ruiru/ Kiu Block 1/ 337.**
  - (c) Ruiru/ Kiu Block 1/ 314.**
  - (d) Ruiru/ Kiu Block 6/ 1276.**
  - (e) Ruiru/ Kiu Block Plot No. 200.**
  - (f) Lucky Summer Plot Number 57.**
  - (g) House No. 1462 KIU River known as Sukari Ranch.**
  - (h) All motor vehicles registered under the Respondent's names.**
  - (II) The above properties shall be shared out in the ratio of 40:60 per cent in favour of the Applicant and Respondent respectively as directed above.**

**(III) Each party shall meet its own costs.**  
**Dated signed and delivered via video link at Nairobi**  
**this 19<sup>th</sup> day of March 2026.**

**H K CHEMITEI**  
**JUDGE**