



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MATRIMONIAL CAUSE NO. E056 OF 2021

ELIZABETH WANJIKU MURAGURI

PLAINTIFF

VERSES

CYRUS GATHUKU MAINA

DEFENDANT

CHARLES GAKAGE INTERESTED

PARTY

JUDGEMENT

1. In the Amended Originating Summons dated 6th December 2022 the Plaintiff prays for a declaration that she is a beneficial joint owner together with the Respondent of the following properties acquired during the subsistence of their marriage, namely:-

(a) Land

- (i) LR No. 27620 /29 - Mlolongo area Mavoko sub county,**
- (ii) LR No 27620/30 -Mlolongo area Mavoko sub county,**
- (iii) LR No. 14760 /109 Athi River,**

- (iv) LR No. 14760/26 Athi River,
- (v) 10 acres in Nanyuki bought in 2015,
- (vi) Nairobi/Block 110/140.

(b) Automobiles

- (i) KCU 183 Z VAN TOYOTA white,
- (ii) KCM 769X Toyota white,
- (iii) KBZ 249G Toyota black,
- (iv) KDC 232 N Lorry/Truck,
- (v) KBZ 671C Van,
- (vii) KBJ 228Q S. Wagon,
- (viii) KBQ 935H S. Wagon,
- (ix) KBL 288N S. Wagon.

(c) Other assets

- (i) Blue Bubble Homecare Products Limited,
- (ii) Apricot Holdings limited.

(d) Accounts

- (i) Absa Bank account No. 0471140678 in the name of Blue Bubble Homecare Limited,
- (ii) Equity Bank account No. 0470293804653 in the name of Blue Bubble Homecare Limited,
- (iii) Equity Bank account No. 0150190083809 in the name of Cyrus Gathuku Maina,
- (iv) Equity Bank account No. 1036200551808 in the name of Blue Bubble Homecare Products Limited Branch Oasis (Uganda).

2. When the matter came up for directions the court ordered the same to be heard by way of oral evidence. Both the

Plaintiff and Defendant testified and did not call any witnesses.

3. It was the Plaintiff's case that she married the Defendant sometimes in 2009 under the tenets of Kikuyu customary law and they were blessed with three children. That their marriage lasted up to 2019 when she filed for divorce and a decree *nisi and* subsequently absolute granted.
4. She further testified that during the subsistence of the marriage they managed to acquire several properties enumerated above. Some of the properties were registered in the name of the Blue Bubble Homecare Limited, a company incorporated by the Defendant and his brother. The Defendant owned 5% shares thereof.
5. She further on cross examination stated that although the Defendant had 5% shareholding in the above company the same was deliberately done so by the Defendant and in any event, she contributed to the acquisition of the properties owned by the said company.
6. She further testified that despite her name not being indicated in the movable and immovable assets she was all along part and parcel of their acquisition as she managed the home and took care of the Defendant as well as the children.
7. That she had her own electronic business where she imported goods from China but it was closed down by the Defendant. She testified that she contributed a sum of Kshs. 70,000 towards their business.

8. On the question of marriage, she said that the Defendant did not challenge the divorce proceedings by way of an appeal and the decree is still in existence.
9. The Plaintiff specifically singled out Thome property which was acquired in 2019 when the marriage was subsisting.
10. She said in reexamination that she took care of the home and family when the Defendant travelled extensively worldwide and that she provided companionship as well.
11. On the Defendant's marriage after she left, she said that she was not aware of the same and that any marriage by the Defendant was after their divorce.
12. The Defendant on his part relied just like the Plaintiff on the affidavits and other pleadings on record.
13. He testified that the directors of the Blue Bubble Company were Daniel Mburu Maina who is the major shareholder and him with 5% holding.
14. He denied that he was ever married to the Plaintiff alone and that he had other wives namely Rose Kariuki, Julie Kariuki and Lucy Njenga whom he married between 2016, 2017 and 2018 respectively and has children with them.
15. He said on cross examination that he got to know about the divorce case between him and the Plaintiff when he had the children's case with the Plaintiff.
16. He also confirmed the decree nisi and absolute dated 22.11.21 when he was shown. He said that he had not appealed against the same.

17. He said that he could not recall when he acquired the Mlolongo properties and the Nairobi Block 110/140 was acquired in 2019 before the divorce.
18. He said that they both did their parenting responsibilities of taking the children to school and that in the children's case No. E498/2021 he was directed to provide support and maintenance.
19. He said that the Plaintiff was living with the children and he has been providing and paying for their school fees.
20. The parties after the close of the case were directed to file written submissions which they complied.
21. The Plaintiff raised several issues including the question of whether the Plaintiff was lawfully married to the Defendant or not, the acquisition of the matrimonial property and how it ought to be shared out.
22. The Plaintiff further submitted on the fact that the Defendant ought to provide a sum of Kshs. 10 million for purposes of supporting and maintaining the children.
23. She further submitted on whether the Plaintiff should have a share in the companies the Defendant had shares over them including the Blue Bubble Limited as well as Apricot company Limited.
24. On the question of marriage, it was her case that there was a valid customary marriage between the two and that the Defendant has never appealed against the divorce judgment or at all.

25. As regards the properties it was her submission that she contributed to their acquisition whether monetary or otherwise. She in particular took care of the home and the children which permitted the Defendant to concentrate on the companies works and responsibilities.
26. The Plaintiff relied on several sections of the Matrimonial Properties Act, namely Section 2 and 6 among others in support of her case as well as the case of **E M M.V. I G M (2018) eKLR**
27. The Plaintiff also prayed for costs of the suit.
28. Taking cue from the Plaintiff on issues, the Defendant denied that he was ever married to the Plaintiff or at all as there was no known formalities done to ascertain any Kikuyu customary marriage between him and the Plaintiff. He relied on Section 3 of the Marriage Act.
29. Further he denied that the Plaintiff in any way whatsoever contributed to the acquisition of the matrimonial property. That the only property registered under his name was Block 110/140 and that as far as the rest of the properties were concerned the Plaintiff did not produce any evidence to show that they were registered under the Defendant's names.
30. As regards the company the Defendant urged the court to rely on the historical case of **Salmon v. Salmon Co. Limited (1892) AC** to distinguish it with the matrimonial properties.

ANALYSIS AND DETERMINATION

31. I think the issues as crafted by the parties are basically three namely, whether there was any marriage between the Plaintiff and the Defendant, whether the properties in question can be termed and considered matrimonial and who was entitled to costs.
32. As regards the first issue it was the Defendant's case that he was never married to the Plaintiff customarily as there was no rites undertaken under the Kikuyu customs.
33. I beg to differ for the simple reason that the Defendant admitted knowing that there was a Divorce Case No. E693 of 2021 and a decree absolute issued therein. He did not appeal against the same nor in any way participate in any manner to set it aside. To the extent that it remains a valid court order it clearly shows a marriage between the two parties herein.
34. At any rate the issue before me has nothing to do with their marriage but on the question of settling the matrimonial properties. I do not respectfully have jurisdiction to discuss the question of marriage between the two.
35. At the same time the Defendant has not denied the three children gotten out of his marriage with the Plaintiff and to which he was ordered to fully support them.
36. The question of the Defendant marrying three other women successively does not water down the fact that the

divorce court found for a fact that there was a marriage between him and the Plaintiff.

37. As regards the matrimonial properties, there is no doubt that in their ten years of marriage they managed to acquire some properties although none of them is registered in their joint names nor in the Plaintiff's name. The only available property under the Defendant's name is the one at Thome, Block 110/140.
38. It appears the rest could be in the name of the Blue Bubble Homecare Company limited in which the Defendant has 5% shareholding. The other 95 % is in the name of the Defendant's brother.
39. The Defendant urged the court to follow the famous case of Salmon(supra) and find that the said company was separate and distinct and therefore the Plaintiff could not lay any claim to it or at all.
40. Whereas this could be the tenable position, I think it would be appropriate at this juncture to argue that a party cannot hide under the Companies Act to defeat the rights of her spouse. It is common knowledge that this company, Blue Bubble was incorporated during coverture and that it traded and managed to acquire several assets in the process.
41. Although it is a company and therefore a distinct legal entity the Plaintiff in my view at the background permitted the Defendant to work and served under this company through granting him time and support. In other words,

while he was travelling the world and working under the auspices of the company the Defendant was busying herself with other duties and responsibilities as well as chores which gave the Defendant time to excel and perform duties without which he would not have managed save with the Plaintiff's direct support.

42. In so many words therefore and has been found in many cited authorities including **P A W M.V. C M A W M (2018) eKLR**, the Plaintiff in a sense contributed to the acquisition of the properties in question.
43. I do nonetheless agree with the Defendant that the only properties this court is to discuss and decide are those whose evidence have been established. The court will not meander into any that are basically hypothetical.
44. In the premises I do find that the Plaintiff has established that she was lawfully married to the Defendant and that the properties in question were acquired during coverture and thus ought to be considered matrimonial.
45. There was in her submissions an element that the Defendant ought to provide a security of Ksh.10 million in favour of the children's support. I do not respectfully agree with this. That is an issue for the Children's Court which in any case has been ongoing as admitted by the parties.
46. On the issue of costs, I find that this being a family matter and despite the call by the Plaintiff that I award her costs the parties shall be responsible for their respective costs.

47. I thus find that the Plaintiff equally contributed to the acquisition of the matrimonial property directly and indirectly. As a matter of fact, she testified about her electronic shop which the Defendant later closed so as to concentrate on the rest of the businesses.

48. Section 2 and 6 of the Matrimonial Property Act is worth reproducing here.

49. Section 2 in terms of contribution states as hereunder;

***“In this Act, unless the context otherwise requires—
"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;

"Family business" means any business which—

(a) is run for the benefit of the family by both spouses or

either spouse; and

(b) generates income or other resources wholly or part of

which are for the benefit of the family;”

50. Section 6(1) on the other hand and in respect to what is matrimonial property states that;

“Meaning of matrimonial property

(1) For the purposes of this Act, matrimonial property

means—

(a) the matrimonial home or homes;

(b) household goods and effects in the matrimonial home

or homes; or

(c) any other immovable and movable property jointly owned and acquired during the subsistence of the marriage.”

51. Taking the totality of the two sections of the Act I think it will be fair to state that it agrees with the above findings and in particular the Plaintiff's contribution to the matrimonial properties herein.

52. In view of this as well as the many authorities by this court all the way to the Supreme Court of Kenya it is now common knowledge that non-monetary contribution is as good as monetary and ought to be taken into account in determining such cases. Therefore, in the case at hand both the Plaintiff and the Defendant equally contributed to the acquisition.

53. As regards the shares in the Blue Bubble Limited, I find that the 5% shares held by the Defendant shall be shared out between him and the Plaintiff. In other words, the Defendant has been holding half of it in trust for his former wife and thus must be transferred to her.

54. Further and in compliance of the above directions any assets whether movable or immovable for avoidance of

doubt held by the company shall henceforth be taken that the Plaintiff has 2.5% stake thereof.

55. The Plaintiff shall get half of Nairobi Block 110/140 Thome Estate as well and any other assets in which the Defendant is a shareholder.

56. The parties shall be at liberty to share out by way of direct division and in the event that the same is not possible dispose it by way of open auction and the proceeds shared out equally. This shall be undertaken within 90 days after the delivery of this judgement.

57. **It is therefore directed and ordered as follows:**

(a) The Plaintiff shall have 50% or half of the following matrimonial properties:-

(i) Nairobi Block 110/140 and any other movable and immovable assets registered in the Defendant's name.

(ii) 2.5 % shares of Blue Bubble Homecare Products Limited and half share of any shares held by the Defendant in any company as at the time of this judgement.

(iii) Half of any money held in any bank accounts in the names of the Defendant as at the date of this judgement.

(b) Each party shall bear their respective costs.

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

H K CHEMITEI
JUDGE