

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KISUMU**  
**MATrimonIAL CAUSE NO. E002 OF 2024**

**LINET IRENE APONDI ..... APPLICANT**  
**- VERSUS -**  
**EDWARD OTIENO REGE ..... RESPONDENT**

**J U D G M E N T**

1. The applicant and respondent were once a happily married couple. Their union began sometime in **2014** but was solemnized on the **21/6/2019** when they got married at the Attorney General’s Chambers. After almost four (4) years, their union met turbulent waters and on the **17/5/2023**, a Decree Nisi Absolute was issued bringing to an end their union.
  
2. Subsequently, the applicant filed this Cause, through an originating summons dated **24/4/2024** said to brought under the *Matrimonial Property Act, 2013* seeking the following orders;

***a) A declaration be and is hereby issued that the Applicant acquired a beneficial interest in Maadili School, Kisumu situated at Milimani, Block 10, Plot No. 709 for the non—monetary contribution that she made towards their development, maintenance and management.***

***b) A declaration be and is hereby issued that the Applicant acquired a beneficial interest in Maadili School, Ndhiwa for the non-monetary contribution that she made towards their development, maintenance and management.***

***c) An order be and is hereby issued that the Applicant is entitled to a share of fifty percent (50%) of Maadili School, Kisumu situated at Milimani, Block 10, Plot No. 709 and Maadili School, Ndhiwa or an equivalent to the non-monetary contribution she made towards their development, maintenance and management.***

***d) An order be and is hereby issued that the Applicant is entitled to a share of the matrimonial property for the non-monetary contribution made during the subsistence of her marriage to the Respondent in form of domestic work, management of matrimonial home, companionship and management of the family business or property.***

***e) The cost of the Application be provided for.***

3. The applicant contended that when she met the respondent in 2014, she was employed as a teacher at Golden Elites Kisumu where she had worked for 10 years and was slated for a promotion to head up a branch of the school at Siaya.

4. That once the respondent took her to his parcel of land situated in Kisumu, Milimani, Block 10, Plot 709, sometime in Mid-2014, the idea to start up a school came up as the respondent inquired what to do with the parcel and so she proposed the idea as a good business venture.
5. That construction started on the site in November 2014 and she was required to supervise the same which she did as schools were closed at the time. That the respondent advised her to resign her job at the time and concentrate in the supervision which led to her contract as the first teacher of the school in December 2014 when she was tasked with setting up the basic structures of the school leading up to January 2015 when all the pre-requisites processes were completed and the school was ready to take up pupils and with the help of others, she advertised the school.
6. That although the respondent legally owned the parcel where the school was constructed and provided the finances towards the construction, she made non-monetary contribution towards its development including the running and management of the school.
7. That she subsequently came up with the idea of starting another branch of the school at the respondent's home in Ndhiwa where she similarly made similar non-monetary contribution. That at all times before and during the subsistence

of the union, the respondent worked and resided in Nairobi though she offered companionship whenever he travelled to Kisumu, Ndhiwa or when she visited him.

8. The applicant testified as **Pw1** in support of her case. She adopted her witness statement dated **10/8/2024** as her evidence in chief and produced the bundles of documents dated **10/9/2024** and **3/10/2024** as PExh1 & 2, respectively. It was her testimony that she was seeking beneficial interest in Maadili Schools and legal interest over land parcels **Kisumu/Konya/82/02** and **Kisumu/Konya/82/03**.
9. In cross-examination, she reiterated that she had been cohabiting with the respondent since 2014 but got legally married in 2019. That she was employed as a teacher in 2014 though there was no evidence of the same as it was a family business.
10. That the respondent acquired Kisumu, Milimani, Block 10, Plot 709 prior to their dalliance but that she supervised the construction of the school thereon from September 2014 – December 2015. That land parcel Block No. Ksm/Kanyakwar “B” Plot No. 2396 (Kanyakwar) was jointly registered in the name of the respondent and his deceased wife.

11. That the school is operated by Maadili Education Fountain Ltd, a company incorporated in December 2014 which company she is neither a shareholder nor director. That she was sacked from the school in 2022 and sought compensation which she was granted by the court.
12. That by the time she met the respondent, he already had the Ndhiwa properties. That she was holding motor vehicle registration number KCM 830A which had been acquired by the respondent prior to their marriage and which she would use to travel to Ndhiwa.
13. That she came to the marriage with a child of 8 – 9-year-old whom the respondent took as his own and provided for and further that the respondent paid for her higher education at the Kenya School of Management and Kenya School of Professional Studies.
14. That she acquired land parcels **Kisumu/Konya/82/02** by herself for Kshs. 300,000/- whereas land parcel **Kisumu/Konya/82/03** was acquired jointly by herself and the respondent who each paid 50% of the purchase price.
15. In re-examination, she told the Court that the labour case had no relationship with her claim and that the losses made by the school between 2015 – 2017 were a result of the school starting whereas the losses in 2020 were occasioned by the Covid pandemic.

16. On his part, the respondent testified in his defence and relied on his witness statement dated **6/9/2024** as his evidence in chief and produced his bundle of documents dated **9/9/2024** as DExh1. That he prepared a pre-nuptial agreement at the insistence of his children though he and the applicant did not sign it.
17. That the alleged construction to the Kisumu properties involved renovations and adding extra toilets and as a result they did not do any additional buildings during their relationship. Further, that during the applicant's employment there were no infrastructural additions to the properties. That he told the applicant that he would build her a house on a property she had acquired. That the property was too small so they added another piece onto it.
18. The respondent contended that at the time he met the applicant, he was carrying out a baseline study in preparation to open a Kindergarten School, an idea he had harboured together with his wife as a retirement activity and that he subsequently employed her as a teacher in 2015. That at the time, he was a widower having lost his wife in 2011 to cancer and that they had been blessed with 3 children.
19. That all the landed property in his name or jointly registered with his children were acquired and developed with his late wife prior to his meeting with the applicant.

20. That both schools are being run by **Maadili Education Fountain Limited** incorporated in 2015 with his daughter Elizabeth Rege and himself as directors and thus the applicant's engagement was not as a wife or co-owner but strictly on employment basis for which she was well remunerated by a monthly salary and other benefits. That therefore, the applicant's employment preceded the marriage.
21. That contrary to her assertions, the applicant, as the school manager failed to manage the school business which constantly required injection of capital forcing him to tap into family savings and loans to sustain the school and further the applicant failed to even do the most basic tasks like registration of the school during her six years of management of the school while her successor took only eight months to do the registration.
22. That he additionally acquired from his own funds a motor vehicle registration KCM 830R, a Toyota Raum to facilitate the movement of the applicant as a school manager and for other school business related errands by other staff which vehicle the applicant has clung onto in spite of her termination of employment.
23. That during the subsistence of the relationship, he made monetary contributory towards the purchase of a parcel of land in Kisumu Kajulu from one Reuben

George Odire Anyango and further made additional investment in terms of procuring architectural plans and structural drawings, fencing, mobilization of building materials and construction of the septic tank amounting to Kshs. 950,000/- at the time of separation and is thus entitled to half share of the property.

24. In cross-examination, he confirmed that the pre-nuptial agreement was never signed by any of the parties. That despite meeting the applicant in 2014, they never lived together until after 2017. That the company managing the school was registered sometime in 2013 – 2014 and that he employed the applicant in the school in 2015 and she was in charge of running the school.
25. That a branch of the school was opened at Ndhiwa, Homabay sometime in 2017 – 2018. That there was increased revenue between 2015 - 2019 a time when the applicant was managing the school. He denied having an intention to open a 3<sup>rd</sup> branch and reiterated that he never bought motor vehicle registration number **KCM 830R** for the applicant but to facilitate her movement as the school manager. That the applicant neglected her duties as the school manager after their marriage on **21/6/2019**.

26. I have considered the pleadings, the evidence on record and the submissions. I have also considered the exhibits filed and produced in evidence and submissions and authorities cited.
27. It is my considered view that the only issue for determination is ***whether the applicant is entitled to a share of fifty percent (50%) of Maadili School, Kisumu situated at Milimani, Block 10, Plot No. 709 and Maadili School, Ndhiwa or an equivalent to the non-monetary contribution she made towards their development, maintenance and management.***
28. Section 6 of the Act describes matrimonial property as follows: -

***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.***

***(2) Despite subsection (1), trust property, including property held in trust under customary law, does not form part of matrimonial property.”***

29. It is thus clear that matrimonial property is that property that is acquired during the subsistence of the marriage between the parties.

30. There have been several decisions as to what constitutes matrimonial property.

In **P.O.M v M.N.K(2017) eKLR**, it was stated that: -

***“This is a suit for division of matrimonial property... The prerequisites are that the parties ought to have been in a marriage, to have had acquired matrimonial property during coverture and for their marriage to have been dissolved as at the point orders on division of matrimonial property are being made...”***

31. Similarly, in **T.M.V. v F.M.C (2018) eKLR**, the court opined that: -

***“... for property to qualify as matrimonial property, it ought to have been acquired during the subsistence of the marriage between the parties unless otherwise agreed between them that such property would not form part of matrimonial property.”***

32. In the present case, the applicant sought orders granting her beneficial share of 50% in **Maadili School** whereas the respondent similarly stated that he was entitled to 50% beneficial share in land parcels **Kisumu/Konya/82/02** and **Kisumu/Konya/82/03**.
33. The question therefore is whether the said properties are matrimonial property. There is no dispute that land parcels **Kisumu/Konya/82/02** and **Kisumu/Konya/82/03** form part of matrimonial property acquired by the parties herein. The question is whether Maadili Schools similarly constitutes matrimonial property.
34. As regards Maadili School, the evidence reveals that the same was set up in 2014 on land parcel number Kisumu, Milimani, Block 10, Plot 709. The evidence by both parties is that they met in 2014. The applicant contends that their union began sometime in **2014** but was solemnized on the **21/6/2019**. This was not disputed by the respondent. It is thus clear that at the time Maadili Schools was being established, the parties were not yet married.
35. However, the applicant contended that at this time, they had started cohabiting with the respondent at his Kisumu home. Can it be assumed that the cohabitation presupposed a marriage?

36. The Supreme Court in the case of **MNK v POM; Initiative for Strategic Litigation in Africa (ISLA) (Amicus Curiae) [2023] KESC 2 (KLR)** set down the strict requirements for a presumption of marriage as follows: -

- a) ***Parties must have cohabited for a long duration;***
- b) ***Parties must have had the legal capacity to marry;***
- c) ***Parties must have intended to marry;***
- d) ***There must have been mutual consent to the marriage;***
- e) ***Parties must have held themselves out publicly as married;***
- f) ***The burden of proving the presumption lay on the party alleging it;***
- g) ***Evidence rebutting the presumption had to be strong, distinct, satisfactory, and conclusive;***
- h) ***The standard of proof was on a balance of probabilities.***

37. Guided by the aforementioned decision and going by the evidence on record, it is evident that the respondent did not rebut the cohabitation claims. The parties were in a relationship that ended up in marriage in 2019. Accordingly, it is my view that the applicant proved cohabitation between the respondent and herself between 2014 which ended up in a marriage in 2019.

38. The property on which the School was established was acquired before the cohabitation and the marriage. However, the business of Maadili Schools was established during the cohabitation that ended up with the marriage. The business was established in the name of a Company of which the applicant is neither a shareholder or director. The shareholding was said to be between the respondent and his daughter. That business of the school, to the extent of the shareholding held by the respondent therefore form part of Matrimonial property between the parties herein.

39. Turning to distribution of the aforementioned properties, In **JOO v MBO [2023] KESC 4 (KLR)** the Supreme Court reviewed the law concerning distribution of matrimonial properties under Section 17 of MWPA and notable decisions on the application of that section and concluded as follows: -

***“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 to a specific share of the property. Furthermore, the position taken by our courts following Echaria is that as much as section 17 of the Married Women Property Act gave courts discretion to do what is just and***

*fair and the varying circumstances before them, it did not entitle a court to make an order which is contrary to any well established principle of law or proprietary interest of ownership of property....*

*79.The court in Echaria also noted that for one to be entitled to a share of the property, the court should consider that circumstances of each arising case independently in assessing contribution further noting what amounts to contribution may either be direct and monetary and indirect and none monetary.*

*80.Having considered the law as above, we have no hesitation in finding that Echaria is still good law for all claims under the Married Women's Property Act 1882...*

*81....*

*82.While therefore reiterating the finding in Echaria, we also find that Article 45(3) acts as a means of providing for equality as at the time of dissolution of marriage, but such equality can only mean that each party is entitled to their fair share of matrimonial property and no more. Nowhere in the Constitution do we find any suggestion that a marriage between parties automatically results in common ownership or co-ownership of property (hence vesting of*

*property rights) and Article 45(3) was not designed for the purpose of enabling the court to pass property rights from one spouse to another by fact of marriage only.*

*82.The guiding principle again should be that apportionment and division of matrimonial property may only be done where parties fulfil their obligation of proving what they are entitled to by way of contribution....”*

40. The position is that, in order for the court to distribute matrimonial property under Section 17 of MWPA, the court must be satisfied that the property was acquired during the subsistence of the marriage through the joint effort of the parties; and in order to determine the respective shares, the court must consider evidence regarding the earning of the respective spouses, the direct or indirect contribution of each spouse towards the family welfare, and the acquisition of the matrimonial property, each case being dependent on its own peculiar circumstances.

41. The applicant contended that she was in charge of purchasing building materials, monitoring and supervising the builders, paying the workers as well as ensuring that the construction ran smoothly. That she then advertised the

school in an effort to attract pupils. The applicant admitted that the respondent contributed financially to the establishment of the school.

42. Conversely, the respondent testified that setting up the school was a lifelong dream he had with his deceased wife and that the applicant was a mere employee who eventually mismanaged the school leading up to her firing.
43. The applicant testified that she quit her job as a teacher in order to concentrate in establishing the School. She supervised its construction until its final setting up. Juxtaposed against this was evidence tendered by the respondent to the effect that the applicant was an employee. All things that she alleged to do were what she was supposed to do as the manager of the school. That the School was being run by Maadili Education Fountain Limited, a corporation wherein the applicant was neither a shareholder or director.
44. The record shows that upon her termination, the applicant successfully instituted legal proceedings against the school asserting that her employee rights had been violated.
45. In *JOO v MBO (supra)* the Supreme Court reinforced that apportionment and division of matrimonial property may only be done where parties fulfil their obligation of proving what they are entitled to by way of contribution.

46. It is my view that on a balance of probabilities, the applicant failed to adduce evidence that she substantially contributed to the establishment of Maadili Schools. She may have supervised their establishment but she was unable to show that what she did was over and above what she was required to do as a manager thereof. The claim for 50% cannot hold having in mind that the school is owned by a company. All she would have claimed is a share of the respondent's shareholding thereon, which she did not.,

47. As regards land parcels **Kisumu/Konya/82/02** and **Kisumu/Konya/82/03**, the undisputed evidence is that the applicant purchased **Kisumu/Konya/82/02** while the respondent contributed equally to the purchase of **Kisumu/Konya/82/03** and made improvements on the said parcel.

48. In the circumstances of this case, I do not think that the said properties need be divided. They should remain in the name of the applicant as that seems to have been the intention of the parties.

49. The upshot of the above is that: -

**a) *The claim for distribution of the Maadili Schools is declined.***

**b) *The distribution in regard to land parcel nos. Kisumu/Konya/82/02 and Kisumu/Konya/82/03 is wholly to Linet Irene Apondi.***

c) *The applicant will also keep motor vehicle registration number KCM 830R.*

d) *Each party do bear own costs of the suit.*

It is so decreed.

**DATED** and **DELIVERED** at Kisumu this 25<sup>th</sup> day of March, 2026.

**A. MABEYA, FCI Arb**

**JUDGE**