



REPUBLIC OF

KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

CIVIL SUIT NO. E006 OF 2020 (O.S.)

TIMOTHY MEELEI LANTEY
APPLICANT

VERSUS

ANNE TEPEIYA GAKURE
RESPONDENT

JUDGEMENT

1. This judgment relates to the Originating Summons dated **10th July, 2020** filed by the Applicant, **Timothy Meelei Lantey** seeking for **ORDERS THAT:**

1. **The joint ownership in respect of the 4 bedroomed, Maisonette No. 3 erected on L.R Number 25605 within Nairobi Area in Lavington estate along Convent Drive, be severed and that the same be held by the parties herein as tenants in common.**
2. **Upon severance of the joint ownership in respect of the 4 bedroomed, Maisonette No. 3 erected on L.R Number 25605 within**

Nairobi Area in Lavington estate along Convent Drive, this Honourable court be pleased to declare that the Applicant directly contributed 75% of the funds in the acquisition of the property.

- 3. Upon declaring the Applicants' direct financial contribution to the acquisition of the property being the 4 bedroomed, Maisonette No. 3 erected on L.R Number 25605 within Nairobi Area in Lavington estate along Convent Drive was 75%, to the Respondent's 25%, the property be sold, and the proceeds be shared between the Applicant and the Respondent in the ratio 75:25.**
- 4. In the alternative but without prejudice to prayers 1,2 and 3 above, the 4 bedroomed, Maisonette No. 3 erected on L.R Number 25605 within Nairobi Area in Lavington estate along Convent Drive be sold and the proceeds be shared equally between the parties herein.**
- 5. The Deputy Registrar be empowered to sign any documents that the Respondent may refuse to sign as far as the sale of the matrimonial property is concerned.**

6. This Honourable Court be pleased to grant such further or other relief as may be just in the circumstances.

7. The Respondent be condemned to pay the costs of this application and incidental thereto.

2. The originating summons is based on the annexed sworn affidavit of the Applicant dated 10th July 2020 and 11th March 2023 respectively. The Respondent filed her replying affidavit dated 7.9.2020 in opposition as well as counterclaim.
3. The court directed the matter to be determined by way of oral evidence where the Applicant testified and called three witness and the Respondent testified and did not call any witnesses.
4. The Applicant and the defendant married each other on 28th December 1996 and lived together for 19 years before divorcing on 30th April 2017. They were blessed with four children although one passed away.
5. The Applicant brought this suit seeking that the matrimonial properties acquired during coverture be divided. While on the other hand the Respondent counter claimed for some of the properties.
6. Before looking at the issues as well as the submissions it is necessary to summaries the evidence as presented.
7. **Pw1 Timothy Meelei Lankey** the Applicant testified that he resides along Ngong Road and works in the oil

industry. He stated that he married the Respondent in December, 1996 and the marriage was dissolved in April, 2017. He adopted his witness statement and affidavits on record together with their annexures and further relied on additional documents filed subsequently.

8. He indicated that the marriage was blessed with four children, one of whom is deceased, and that there is one minor, with parental responsibility having been shared pursuant to orders issued in Children's Court proceedings. He further stated that he currently resides in rented premises at a monthly cost of **Kshs. 52,500/=** following his separation from the matrimonial home.
9. He maintained that the matrimonial property, **L.R. No. 25605** in Lavington, was acquired primarily through his financial contribution, asserting that the Respondent did not make consistent payments toward its purchase or mortgage.
10. He also referred to a prior jointly owned property in Woodley which was sold in 2014, with proceeds shared between the parties.
11. With regard to other assets, he stated that the Kajiado Emugur farm was inherited from his late father and remained part of his father's estate, and denied that the Respondent made significant developments thereon. He further explained that certain projects initiated on the farm were either incomplete or abandoned.

12. He confirmed that the Ngong property was sold with the Respondent's knowledge and participation, and that the Namanga plots were allocated to him directly without contribution from the Respondent.
13. He also outlined his involvement in a restaurant business that later ceased operations and stated that certain assets such as a tractor and motor vehicles were acquired through his personal employment benefits, with some subsequently sold. He denied that livestock on the farm had been jointly gifted to them, stating that such assets were distributed among his father's beneficiaries. He further testified that the Respondent had concealed some properties acquired during the marriage and had excluded him from the matrimonial home for a period, despite claiming a substantial share of the Lavington property.
14. Under cross-examination, he acknowledged that the Lavington property was acquired through a joint account to which both parties contributed, including payment of the deposit and servicing of the mortgage, though he maintained that his contributions were greater.
15. He confirmed that both parties contributed to the development of the Kajjado farm, including fencing, borehole drilling, and other improvements, but stated that the Respondent later abandoned the project. He denied any intention to sell the farm and disclaimed involvement with certain legal representatives alleged

to have been engaged in its sale. He further stated that proceeds from the Ngong property were used for family expenses, including children's education and reiterated that he continues to contribute to the upkeep of the children.

16. In re-examination, he referred to documentary evidence, including bank statements and correspondence, to support his claim of having made the primary financial contribution to the acquisition and servicing of the mortgage. He maintained that the Respondent's contributions diminished over time and that certain actions taken by her, including placing a caution on the Kajiado property, were done in bad faith.
17. **Pw2 Charity Naserian Tauta** the sister to the Applicant testified and while relying on her witness statement stated that she wanted the court to be fair in sharing out the properties.
18. Under cross examination she said that she would not tell the percentage of the parties' contribution towards the purchase of the properties.
19. She also acknowledged the parties three children.
20. **Pw3 David Lantey** testified and relied as well on his witness statement and stated that he wished that the court divides the properties fairly.
21. On cross examination he admitted that the two had challenges in their marriage and the family attempted to

- resolve in vain. He said further that he did not know the properties they acquired during coverture.
22. He said that there was a borehole as well a chicken project in the Kajiado property.
 23. **Anne Tepeiya Gakure**, the Respondent, testified that she was married to the Applicant in December, 1996 and divorced in 2017, and adopted her witness statement and affidavits together with the annexures.
 24. She stated that during the marriage they jointly acquired several properties, including the Lavington matrimonial home, to which she contributed both directly and indirectly through her income deposited into a joint account and through domestic and family responsibilities.
 25. She also detailed her involvement in the development of the Kajiado Emugur farm, including fencing, drilling a borehole, establishing a greenhouse, and other improvements, and stated that she did not abandon the project but left due to health reasons and childcare responsibilities.
 26. She further testified that certain properties, including the Ngong property, were disposed off without her full consent and that she did not receive a fair share of the proceeds. She asserted that other assets, including the Namanga plots, motor vehicles and agricultural assets, were acquired during the marriage and that her contributions, though sometimes indirect, formed part of

the overall family income. She maintained that the Applicant had failed to disclose all matrimonial assets and sought an equitable share of all property acquired during the marriage.

27. Under cross-examination, she confirmed the existence of a joint account used to service the mortgage and acknowledged her inability to quantify her exact financial contribution. She reiterated that her contributions included both financial and non-financial inputs, including domestic responsibilities that enabled the Applicant to earn income.
28. She maintained that she contributed to the development of inherited property and that she was not fully informed of certain transactions involving sale of matrimonial assets.
29. In re-examination, she emphasized that her contributions to the marriage were both monetary and non-monetary and that she seeks a fair and equitable distribution of all matrimonial property.

ANALYSIS AND DETERMINATION

30. I have carefully considered the application, the responses thereto and the rival submissions filed by the parties.
31. The submissions have essentially captured the issues raised and I do not see the reasons to reiterate the same here.

32. Upon consideration of the pleadings, *viva voce* evidence and applicable law, the primary issue for determination is whether the suit property, **Maisonette No. 3 on L.R. No. 25605, Lavington**, constitutes matrimonial property and, if so, the respective beneficial interests of the parties therein.
33. This Lavington, property from the evidence on record, essentially is the backbone of this cause. The rest of the properties as mentioned in the counter claim appeared peripheral in the circumstances.
34. **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.
35. **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.
36. **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.

37. 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.'

38. 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.”

39. From the pleadings and evidence, it is not in dispute that the property was acquired during the subsistence of the marriage through a mortgage facility serviced via a joint account into which both parties contributed. Consequently, under Sections **6** and **14** of the Matrimonial Property Act, the property qualifies as matrimonial property and attracts a rebuttable presumption of equal ownership, subject to proof of contribution.
40. On the question of contribution, the Applicant asserts a **75%** financial contribution based primarily on bank statements and his alleged consistent remittances, while the Respondent maintains that she made both direct and indirect contributions, including deposit payments, mortgage servicing through the joint account and domestic support that enabled the Applicant’s income generation.
41. The Respondent in her oral testimony demonstrated how she paid also the stamp duty and other outgoings including legal charges for the transfer of the property.
42. Notably, the Applicant’s own testimony acknowledges the use of a joint account for acquisition and repayment, which weakens the claim of exclusive or overwhelmingly disproportionate contribution.

43. Additionally, the Respondent's evidence on non-monetary contribution, household management, childcare and support during the marriage, falls squarely within the statutory definition of contribution under Section **2** of the Act and must be accorded due weight.
44. The Applicant has prayed for 75%:25% division in his favour. While the Applicant seeks to distinguish certain properties as inherited or independently acquired, the evidence shows that at least some of these assets were developed or improved during the marriage, thereby conferring a beneficial interest upon the Respondent under Section **8** of the Act.
45. The competing allegations regarding concealment, unilateral disposal of assets and lack of full disclosure also undermine the Applicant's claim to a clearly quantifiable superior share. The evidentiary record, particularly the commingled financial arrangements and the absence of precise tracing, does not support in my view a strict mathematical apportionment in the ratio of **75:25** as urged by the Applicant.
46. In the premises, I find that the suit property is matrimonial property jointly acquired and that both parties made significant, albeit different forms of contribution. The Applicant has not discharged the burden of proving a substantially higher entitlement to warrant the **75:25** distribution sought.

47. Based on the above cited authorities I find that the Lavington property is to be shared out equally between the two parties herein. In the event that they are unable to agree the same shall be sold after undertaking a valuation and the proceeds shared out equally between them.
48. The parties shall have the liberty to buy each other out but after the valuation had been undertaken.
49. The other properties as contained in the counter claim which I considered peripheral and perhaps even sold before the filing of this suit includes the Kajiado Emugur farm measuring 50 acres. It is admitted that the Applicant inherited it from his father and for that reason it does not qualify as matrimonial property.
50. The Respondent did not prove to my satisfaction her contribution in terms of irrigation, borehole development as well as the chicken business. All in any event were wound up. The same includes the Victus restaurant business which was jointly owned by the parties and other persons.
51. The same goes with the motor vehicles and other parcels which appear had been sold and or were being utilized independently and, in my view, does not merit much consideration.
52. I think the rest of the properties had been disposed off including the Woodley house as well as the Ngong parcel and the proceeds utilized by the two before their

divorce. As matter of fact the proceeds from the Woodley property were utilized in the purchase of the Lavington property.

53. In allowing the suit and disallowing the counter claim, I direct that:-

- (a) LR NO. 25605 situate at Nairobi Lavington estate along Covent drive house No. 3 is a matrimonial property and the same shall be shared out equally between the Applicant and the Respondent.**
- (b) The above property shall be valued by a professional valuer, if it cannot be severed, and it be sold and the proceeds shared out equally less any liabilities.**
- (c) The valuer shall be agreed upon by the parties and in the event of any disagreement the Deputy Registrar of this court shall be at liberty to appoint one.**
- (d) In compliance with (b) above the same shall be undertaken within 90 days from the date herein.**
- (e) Either of the parties upon valuation being undertaken shall be at liberty to buy out each other.**
- (f) The property shall be sold by way of a public auction undertaken by a qualified and duly registered auctioneer.**

(g) The professional costs or fees of both the valuer and the surveyor shall be met equally by both parties and in default they be at liberty to file their bills.

(h) Costs shall be in the cause

Dated signed and delivered via video link at

Nairobi this 23rd day of April 2026.

**H K CHEMITEI
JUDGE**