



**VAS v CIL (Matrimonial Case E001 of 2025)
[2026] KEHC 4855 (KLR) (15 April 2026) (Judgment)**

Neutral citation: [2026] KEHC 4855 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
MATRIMONIAL CASE E001 OF 2025**

**AC BETT, J
APRIL 15, 2026**

BETWEEN

VAS APPLICANT

AND

CIL RESPONDENT

JUDGMENT

1. The applicant and the respondent were husband and wife, having entered into a marriage under the *Marriage Act* in 2016. The marriage lasted long enough for the couple to be blessed with 3 children, but it soon encountered headwinds that culminated in a divorce vide Kakamega MCDC No. E0XX of 2023, where a decree absolute was issued.
2. The applicant has now filed suit vide an originating summons against her former husband in which she seeks a declaration that during the subsistence of their marriage, they jointly acquired some partially developed properties. She prays that the court make an order that each party is entitled to an equal share of the matrimonial property and that the said property be sold and a portion be applied towards the settlement of outstanding liabilities for building materials, and the balance thereof shared equally between the parties.
3. The applicant's case, which is advanced in the affidavit and further affidavit sworn in support of the originating summons, is that during her cohabitation with the respondent, they jointly purchased property with the intention of renting the same. She avers that the property, which is comprised in L.R. No EAST/Wanga/6277 and L.R. No East Wanga/Lubinu/XXXX, is in their joint names and comprises 1 and 2-bedroom self-contained houses.
4. The applicant further avers that the respondent took some construction materials costing Kshs. 954,940/= on credit to complete the construction of the rental houses on the subject property from Shameembanu t/a Ashraf Hardware, and the said debt is yet to be settled.



5. The respondent opposed the claim in an affidavit sworn on 18/3/2025. He avers that he purchased the subject properties exclusively, without any contribution by the applicant, through loans and friendly loans he secured to offset the purchase price. He further deposes that the picture painted by the applicant is false, as both parcels of land are yet to be fully paid for, and that he still owes the purchasers (sic) Kshs. 950,000/= for which he still receives demand letters. He avers that the subject properties were purchased for the benefit of their children and should be registered in the parties' joint names as trustees for their children.
6. The respondent annexed an Mpesa statement from Safaricom showing that he has made mobile money payments to John Makokha dating from 23/8/2023. The aggregate total of payment made to John Makokha who was the vendor of the subject properties is Kshs. 2,230,906, with the last payment having been made on 9/11/2024.
7. In rejoinder, the applicant swore a further affidavit on 28/8/2025 in which she avers that she contributed to the subject property by paying the first Kshs. 1,000,000/= deposit to the vendor of the subject property at the time of the purchase. According to her, the said sum was from the proceeds of her life insurance policy savings from July 2013 to July 2023, which she transferred from her savings account number 547XXXX101 at Diamond Trust Bank to the couple's joint savings account number 538XXXX001 at Diamond Trust Bank. She claims that it is from the said joint savings account that the Kshs. 1,000,000/= was transferred to the vendor as shown in the bank statements.
8. The applicant further states that she made two deposits into the couple's joint account, being Kshs. 300,000/= on 15/7/2023 and a similar sum on 16/7/2023 and Kshs. 100,000/= on 16/8/2023, all from her aforesaid Diamond Trust Bank account. She further avers that the Kshs. 1,000,000/= deposit was transferred to the vendor's account on 28/8/2023. Further, she and the respondent gave the vendor their parcel of land, which was developed with a 4-bedroom house, which was registered in their joint names and valued at Kshs. 4,500,000/= as part payment of the purchase price. The applicant avers that the property they gave out was comprised in L.R. No Butso/ Shikoti/XXXX and, having been jointly acquired, was registered in their joint names. She states that the balance of Kshs. 2,800,000/= was paid in cash, with her personally contributing Kshs. 1,000,000/=. She further deposes that she used to visit the subject property to check on the progress of the construction and purchased household items for the 2 caretakers employed by the respondent to take care of the property. She claims that at the time, she was unaware that the respondent was procuring construction materials on credit and only learned of this when she received a phone call from the hardware store owner demanding payment.
9. The applicant deposes that she made contributions of up to Kshs. 2,060, 941/= as reflected in the bank statements in respect of the joint account, and that they used to withdraw money from the said account for their various domestic needs, but the respondent never made a single deposit into the said account despite being a beneficiary thereof.
10. The applicant further avers that the applicant moved from the matrimonial home to Eldoret town to pursue a Master's degree at Moi University in 2017 and lived there until 2022. During this period, she paid the house rent at Kshs. 55,000/= per month, as he did not have extra income being a student, and she also gave him an ATM card to enable him to withdraw money for upkeep and maintenance. She avers that instead, the respondent got involved in extra-marital affairs and even took several women to the house she was paying rent for.
11. The court notes that despite seeking and securing leave to file a further affidavit after being served with the applicant's further affidavit, the respondent failed to do so.



12. The parties both sought directions that the matter be canvassed through affidavit evidence on record and written submissions.

Applicant's Submissions

13. The applicant submits that she contributed immensely to the well-being of their marriage with the respondent and to the acquisition and development of the subject properties, and that the said properties are matrimonial properties which should not be held in trust for their children as the respondent prays. She submits that due to the monetary and non-monetary contributions she made, the subject properties should be sold and the proceeds thereof shared equally upon settlement of the two outstanding liabilities of Kshs. 954,950/= for construction materials and Kshs. 430,000/= being the balance of the purchase price.
14. The applicant relies on the case of *IC v SS* [2024] KEHC 3316 (KLR) and urges the court to hold that the two parties each made a 50:50 contribution towards the acquisition of the matrimonial property and towards the marriage, and that the subject properties be valued, sold, and the proceeds applied as prayed.
15. The applicant filed further submissions in response to the respondent's submissions, but in the said submissions, she raises issues of fact that had not been deponed to in her two affidavits. It is trite that submissions on facts, no matter how detailed or persuasive, cannot replace evidence.

Respondent's Submissions

16. The respondent submits that he fully funded the subject properties, and the applicant failed to demonstrate that she contributed towards the acquisition of the subject properties by monetary or non-monetary contributions. He asserts that after buying the properties, he solely undertook their improvement without any contribution from the applicant. He further submits that there is an outstanding sum of Kshs. 950,000/= from loans taken to finance the acquisition and development of the properties.
17. The applicant posits that he has provided clear and consistent evidence that the purchase price of the subject properties was entirely sourced through his own personal efforts and that the mere acquisition or joint registration of property during the subsistence of a marriage does not automatically confer ownership rights to a non-contributing spouse.
18. The respondent relies on the case of *Federation of Women Lawyers (FIDA) v Attorney General & Another* [2018] KEHC 7130 (KLR) and *PKM v JNK & Another* [2020] KEHC 3010 (KLR). He further relies on *JOO v MBO* [2023] KESC 4 (KLR). He argues that his uncontroverted financial records, loan obligations, and the continuing repayment burden provide conclusive evidence that he alone bore the cost of acquisition and development of the subject properties. He submits that the applicant has no proprietary interest in the subject properties and that he would wish that the same be held in trust for the benefit of their children.

Analysis and Determination

19. Based on the pleadings and written submissions, the issues that arise for determination are:-
 - i. Whether the two properties comprised in L. R. NO EAST WANGA/ LUBINU/6277 and L. R. NO EAST WANGA/ LUBINU/XXXX jointly acquired by the parties are matrimonial property.
 - ii. Whether the Applicant and the Respondent are entitled to an equal share of the said properties.



- (iii) Whether the said properties should be sold and part of the proceeds applied to pay off the existing liabilities and the balance thereof shared equally between the Applicant and the Respondent.
- (iv) Whether the Respondent should pay the costs of the suit.
20. There is no dispute that the parties were married in April 2016 and that the marriage was legally dissolved and a decree absolute dated 29/10/2024 issued vide Kakamega MCDC No. E0XX of 2023. There is also no dispute that the marriage was blessed with three issues who were left in the physical custody of the Applicant after the dissolution of the marriage. What is clearly in dispute is whether the two subject properties, which were acquired during the currency of the marriage and registered in the joint names of the parties, were solely acquired by the Respondent as he asserts or were acquired through the efforts of both man and wife.
21. The legal principles underpinning the division of matrimonial property are governed by Article 45 (3) of *the Constitution* and the *Matrimonial Property Act*. It is predicated on the concept of equality and fairness. It seeks to ensure that both spouses are treated equally and fairly, so that each retains the same rights upon dissolution of the marriage, based on their respective contributions. Section 7 of the *Matrimonial Property Act* envisages a situation where subdivision of matrimonial property upon dissolution of a marriage is based on each spouse's contribution towards its acquisition or development. Such contribution can be direct or indirect.
22. Section 6(1) of the Act defines matrimonial property as:-
- “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.”
23. Section 7 of the Act provides:-
- “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.”
24. Property that is acquired during the subsistence of a marriage and registered in the joint names of the spouses is prima facie presumed to have been acquired by the two spouses. Section 14 of the Act provides:-
- “Where matrimonial property is acquired during marriage—
- (a) 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.”
25. The import of Section 14 is that, as much as a matrimonial property may be presumed to belong to both spouses jointly, either spouse can lead evidence to prove that the property was solely acquired



through their personal effort without any contribution from the other spouse, or that the other spouse only contributed a certain portion towards its acquisition.

26. Pursuant to the aforesaid legal provisions, it is now settled that marriage alone does not automatically entitle a spouse to property acquired in the course of the marriage. Ownership or occupation does not confer proprietary rights. For an asset to be divisible as matrimonial property, it must be both “acquired during marriage” and be the subject of spousal contribution. The Supreme Court in *P.N.N. v Z.W.N.* [2023] KESC 46 (KLR), clarified the law on this point thus:-

“...It is upon the person claiming interest in matrimonial property to demonstrate their contribution towards the acquisition, preservation or improvement of the subject property. It is not enough to rest on the mere fact of marriage or to rely on amorphous assertions of indirect contribution; particularization and proof are mandatory.”

27. “Contribution” is defined under Clause 2 of the *Matrimonial Property Act* (2013) to include: - monetary contributions (actual funds committed to purchase, mortgage repayments, improvements, etc.), non-monetary contributions (domestic work, childcare, companionship, care and management the matrimonial home, management of family business or property, and farm work).

28. Additionally, in the case of *JOO v MBO; Federation of Women Lawyers (FIDA Kenya) & another (Amicus Curiae)* [2023] KESC 4 (KLR), while dealing with the issue of contribution to matrimonial property, the apex court held that:-

“Equity was an important principle when it came to matrimonial property since what was fair as it related to equity was not a question of the quantitative contribution by each party but rather the contribution by any party in any form, whether direct or indirect. Any substantial contribution by a party to a marriage that led to the acquisition of matrimonial property, even though such contribution was indirect, but had in one way or another, enabled the acquisition of such property amounted to significant contribution. Such direct or indirect acts included:

- a. Paying part of the purchase price of the matrimonial property.
- b. Contributing regularly to the monthly payments in the acquisition of such property.
- c. Making a substantial financial contribution to the family expenses to enable the mortgage installments to be paid.
- d. Contributing to the running of and welfare of the home and easing the burden of the spouse paying for the property.
- e. Caring for children and the family at large as the other spouse worked to earn money to pay for the property.”

29. In *M.W.M v C.M.M* [2023], the court held that:-

“Not every act of homemaking or companionship, absent evidence tying it to asset acquisition or improvement, qualifies as a non-monetary contribution under the law.” i. For non-monetary contributions such as domestic work, childcare, business management, or general support, the law expects a claimant to not only assert but particularize and evidence how these efforts enabled the other spouse to acquire or enhance specific property. This requirement is made explicit in recent Kenyan and foreign case law which refuses to equate



mere existence in a marriage with property rights as highlighted above. The respondent also cited English case of *Burns v Burns* where it was held that where it was held that -“Mere domestic activity does not, by itself, create an interest in property; there must be proof that the parties intended the asset to be jointly owned or that the claimant made a direct financial contribution or carried out specific quantifiable work which increased its value.”

30. It is settled law that the burden of proof lies with the party asserting a fact, pursuant to Sections 107–109 of the *Evidence Act* (Cap 80) which provide:-

“107. Burden of proof.

- (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
- (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

108. Incidence of burden.

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

109. Proof of particular fact.

The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”

31. Since the applicant claims half of the matrimonial property by virtue of contribution, the burden lay on her to furnish sufficient evidence in proof of her claim in the face of the respondent’s averment that he acquired the property solely. In *Moi v. Muriithi and Another* [2014] KECA 642 (KLR), the Court of Appeal held that:-

“51. In these proceedings and particularly the claim that the appellant sold off properties of three companies to the detriment of the 1st respondent, the three provisions reproduced above require that the 1st respondent who laid the claim that certain facts existed had the burden to prove existence of those facts. It is no matter that the appellant did not refute the claim by way of a replying affidavit. The 1st respondent was still bound to lay evidence on a balance of probability of the alleged facts before the learned judge.

55. It is a firmly settled procedure that even where a defendant has not denied the claim by filing of defence or an affidavit or even where the defendant did not appear, formal proof proceedings are conducted. The claimant lays on the table evidence of facts contended against the defendant. And the trial court has a duty to examine that evidence to satisfy itself that indeed the claim has been proved. If the evidence falls short of the required standard of proof, the claim is and must be dismissed. The standard of proof in a civil case, on a balance of probabilities, does not change even in the absence of a rebuttal by the other side.”

32. In matrimonial property disputes, the applicant bears the burden of proving:



- (i) That the property constitutes matrimonial property; and
 - (ii) The nature and extent of their contribution toward its acquisition.
33. The Court notes at the outset that the parties elected to canvass the matter by way of affidavit evidence pursuant to Order 19 of the Civil Procedure Rules, 2010. No oral evidence was tendered, and the determination herein is therefore based entirely on the affidavits filed and the documents annexed thereto. I will now endeavour to review the affidavit and documentary evidence and determine issues as raised.
 34. The agreement of sale dated 26/8/2023 shows that the two spouses jointly acquired the two properties for a consideration of Kshs. 7,300,000/=. The consideration was an exchange of one property comprised in L. R. NO. Butso/so/Shikoti/1433, valued at Kshs. 4,500,000/=:, and a cash payment for the balance.
 35. The applicant adduced evidence, through bank statements, that the first cash payment of Kshs. 1,000,000/= was paid from their joint account, into which she had deposited a similar amount through a series of transactions a few days before the total amount was transferred to the vendor's account. The respondent did not rebutt the evidence, and I am satisfied that the applicant was able to demonstrate that the monies originated from her accounts and constituted her contribution towards the acquisition of the property.
 36. There was no evidence that the property comprised in L.R. No. Butso/so/Shikoti/1433 valued at Kshs. 4,500,000/= which was exchanged in partial consideration of the matrimonial property was joint property nor that it was purchased through the joint efforts of the two spouses as the applicant failed to adduce the certificate official search in respect of the said title. However, since the respondent did not expressly controvert the applicant's averment in respect to the said property, I am satisfied that the applicant has, on a balance of probabilities, proven that the same was acquired through their joint efforts.
 37. In absence of any affidavit to rebutt the Applicant's depositions in her affidavit sworn on 28th August 2025, the court finds on a balance of probabilities, that the applicant has proven that she made contributions towards the family upkeep by making deposits to their joint account.
 38. The respondent did not dispute the applicant's averments that she has been in physical custody of their children even as he went for further studies and after the dissolution of the marriage. The applicant made non-monetary contribution through child bearing, domestic work, management of the matrimonial home, child care, companionship and management of the family business which included overseeing the improvement of the matrimonial property.
 39. Regarding the applicant's claim that she paid the respondent's house rent while he was undergoing a Master's Degree in Moi University and gave him her ATM card for domestic use, there was no proof of the same by way of documentary evidence.
 40. The respondent in paragraphs 9 and 10 of his replying affidavit avers that a sum of Kshs. 950,000/= is still owed in respect to the purchase price. However, the demand letter dated 6/9/2024 which he has annexed to the affidavit states that a sum of Kshs. 430,000/= is owing. This is a material contradiction considering the alleged amount owing and the Mpesa statement that confirms payment of Kshs. 2,230,000/= to the vendor, a sum far in excess of the Kshs. 1,800,000/= net balance after the applicant had paid Kshs. 1,000,000/= by way of an internal bank transfer from the couple's joint account to the vendor's account as agreed in Clause 3.3 of the sale agreement dated 26/8/2023. In the circumstances, I reject the respondent's claim that there is an outstanding debt respecting the purchase price and hold



that the same has been paid in full with the respondent making a substantially higher contribution than the applicant.

41. I note that the respondent did not specify the extent of his financial input towards the development of the subject property despite annexing an Mpesa and Bank account statement that reflects cash outflows whose destination or purpose was not disclosed. Nonetheless, I am guided by the applicant's averments in paragraph 8 of her further affidavit where she depones that the respondent had employed caretakers to live on the subject property and she used to check on the construction progress and purchase urgent items that were required. She further avers that "the rest of the construction materials was purchased by the respondent". This is borne by the outstanding debt to the Hardware store that is owed by the respondent and undisputed by the applicant.
42. From the applicant's pleadings, it does not come out clearly what level the construction on the subject property had reached. The term "major construction" is too vague for the court to deduce the extent. Viva voce evidence would have assisted both parties to clarify their case but doing the best I can, I deduce that the respondent is the one that was responsible for the bulk of the finance that went towards completion of the construction of the rentals on the subject properties.
43. Regarding the respondent's submissions that the property be held in trust for the benefit of the children, this can only be done with the consent of the applicant. Once a property is determined to be matrimonial property the legal regime that governs it is the *Matrimonial Property Act*. In LNK v. EW [2024] KEHC 2016 (KLR), SN Riechi J held that the court has no power to issue an order on how parties should deal with matrimonial property and dismissed an application to have a matrimonial property held in trust for the benefit of the children of the parties.
44. In the end, the court makes the following orders:-
 - a. That the properties comprised in L.R. No. EAST WANGA/LUBINU/6277 and EAST WANGA/LUBINU/XXXX are matrimonial property having been jointly acquired by the Applicant and the Respondent.
 - b. That the Applicant and Respondent are entitled to the said matrimonial properties on a 40% to 60% ratio.
 - c. That the said properties be valued and sold and part of the proceeds be used to pay Kshs. 954,940/= being building materials.
 - d. That the net balance after settlement of the debt be shared between the Applicant and the Respondent on a 40% to 60% basis.
 - e. In view of the fact that this is a family matter, each party shall bear its own costs.

DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 15TH DAY OF APRIL 2026.

A. C. BETT

JUDGE

In the presence of:

..... for the Applicant

..... for the Respondent

Court Assistant: Polycap

