



**AAL v GWM (Family Originating Summons E090 of 2023)
[2026] KEHC 6178 (KLR) (Family) (8 May 2026) (Judgment)**

Neutral citation: [2026] KEHC 6178 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
FAMILY ORIGINATING SUMMONS E090 OF 2023**

PM NYAUNDI, J

MAY 8, 2026

BETWEEN

AAL PETITIONER

AND

GWM RESPONDENT

JUDGMENT

1. Vide Amended Originating Summons dated 20th August 2024, the Petitioner seeks the following orders-
 - a. Thatan Order do issue declaration (sic) that the Properties herein below listed were acquired during the subsistence of the marriage and thus are matrimonial properties
 - i. Dagoreti/Mutuini/ XXXX approximately 0.1400
 - ii. ½ of Dagoreti/Mutuini/ XXXX
 - b. Thatan Order do issue declaring that the applicant is entitled to 100% of the properties Dagoreti/Mutuini/ XXXX, approximately 0.1400 and ½ of Dagoreti/Mutuini/ XXXX, having solely acquired them.
 - c. Thatan order do issue directing that the properties Dagoretti /Mutuini.XXXX approximately 0.1400 and ½ of Dagoretti /Mutuini/XXXX be transferred to the applicant upon payment of all the requisite fees in relation to their purchase.
 - d. Thatthe costs of the Summons be provided for.



2. The application is based on the grounds on the face of the application and supported by the affidavit sworn on 5th December 2023. The parties are man and wife having formalised their marriage on 16th April 2016. The union bore 4 children.
3. He claims that he was the only breadwinner throughout the marriage. He financed a butchery business for the respondent to operate, but it failed due to her mismanagement. Additionally, he supported the respondent's education at St. Paul's University, where she earned both a diploma and an undergraduate degree. He also provided for the children's financial needs.
4. After they identified the two assets subject to this suit, he paid the purchase price solely. He proceeded to finance the construction of 16 rental units on the land. The rental income is utilised to meet household expenses, including fees and school-related expenses for the children.
5. His antenna was raised when, after making payments for the purchase of the land, he was unable to obtain a copy of the sale agreements from the advocate acting on their behalf. He was alarmed to find that the first page of the document of sale shared with him listed the respondent as the purchaser. The Advocate informed him that he was not a party to the agreement. In addition, he alleges that the respondent diverted the rental income to her individual account. He also financed her 2022 election campaign, and she had reneged on an agreement to refund the money.
6. The respondent opposes the Originating Summons and has filed a reply dated 1st October 2024. Apart from admitting that the parties are married and that they had children, she contests the other averments by the applicant; in particular, she contends that providing for the children was a shared responsibility.
7. That it was the applicant who authorised her to proceed with the transaction in her name. She denies that he paid her fees at St. Paul's University. She contributed to the purchase of the property, as the payments were made from a joint account in which she made deposits from her businesses.
8. She contends that the respondent applicant has not been sidelined, as the transactions cannot proceed without the original documents, which are in his possession.
9. The matter proceeded by way of viva voce evidence. Both the parties testified as their sole witness.
10. In his evidence in Chief, the applicant reiterated the averments in his affidavit which I have set out in detail above. On cross-examination, he confirmed that the marriage had since been dissolved on 23rd May 2024. The rental income was paid into a joint account and utilised to meet the family expenses. He was surprised to find out that he was not included as a party in the sale agreement. It was the advocate who informed him that he was not a party to the agreement.
11. In her examination in Chief, the respondent relied on her affidavit and witness statement, which I have summarised above. On cross-examination, she stated that other than the La Mag butchery, she had other business, she did not have evidence of the existence or earnings from that business.
12. She stated that although the La Mag Butchery eventually collapsed, she contributed to the family income when she was running it. The business did not have a bank account, and she did not have the business records. She conceded that the Applicant contributed to her tuition at St. Paul's University.
13. She did not provide proof of her payments towards her tuition at St. Paul's University, nor her deposits into the joint account. She did not run a personal account during the marriage. She contributed towards the tuition for the Children. Although the sale transaction was in her sole name, she denied that she had intended to defraud the applicant. She conceded that he had contributed to her campaign, but denied that there was an arrangement with his family to finance the Campaign.



14. On re-examination, she stated that she supervised the construction of the rental units. Her proposal is that since the properties were bought for the benefit of the children, they should be held in trust for them.
15. Both parties have filed their submissions.
16. The Applicant's submissions are dated 19th November 2025. He frames the following as the issues for determination.
 - a. Whether the properties herein constitute matrimonial properties and what is the contribution of each party on the said properties?
 - b. How should the properties be distributed between the parties?
17. On the applicable law, the applicant submits that in the absence of proof of contribution on the part of the respondent and on the authority of the decision in UMM v IMM [2014] eKLR and Mathews Chisimba Nkhata vs Esther Dolly Mwenda Nkhata SCZ Appeal No. 60 of 2015, the respondent is not entitled to a share of the properties.
18. The respondent's submissions are dated 7th January 2026. She frames the issues for determination.
 - a. Whether the property Dagoreti/Mutuini. XXXX and Dagoreti/Mutuini/ XXXX are matrimonial properties?
 - b. What share of the properties is the Respondent entitled to?
19. The respondent submits that on the authority of the decision of the Court of Appeal in JOO v MBO Civil Appeal No. 81 of 2017 the court should take cognisance of the fact that in a marriage context parties may not keep records of financial transactions. She submits that her contribution is derived from her running of the family business and her non-monetary contribution which is recognised in the decision in UMM v IMM [2014] eKLR.
20. It is her submission that she is entitled to 50 per cent share of the matrimonial property.

Analysis And Determination

21. Having considered the pleadings, evidence adduced, submissions filed and the relevant law, the issues for determination are framed as follows-
 - a. Whether the subject parcels of land, comprise matrimonial party?
 - b. If the answer to (a) above is in the affirmative what is the respective share of the parties based on their individual contributions.
 - c. Arising from the (a) and (b) above what are the consequential orders.
22. On whether or not the property Dagoreti/Mutuini. XXXX and Dagoreti/Mutuini/ XXXX are matrimonial properties? Section 6 of the *Matrimonial Property Act* defines matrimonial property thus-

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.

23. It is common ground that the transaction towards the finalisation of the transfer of the properties to either of the parties is yet to be finalised, infact the applicant moved to Court to arrest the transaction as he was apprehensive that the applicant would have the properties transferred to her sole name to his detriment. It is not disputed that the properties have been paid for and that rental units have been constructed with the parties herein drawing the rental income. It would appear therefore that the vendors have passed on possession to the parties pending the finalisation of the transaction. The property has therefore been acquired within the meaning of the Matrimonial Property Act and comprises matrimonial property.
24. The next issue for determination therefore, is the respective shares of the parties. Section 7 of the Matrimonial Property Act envisages the division of the matrimonial property between the parties upon dissolution of the marriage based on the contribution of either spouse to its acquisition.
25. The apex Court in Kenya in its decision in JOO v MBO & 2 others [2023] KESC 4 (KLR) underscored that a parties share to matrimonial property is determined by their contribution towards its acquisition. As part of this enquiry into the respective shares of the parties, the Court is obligated to ensure that justice is served. Based on the decisions in PNN v ZWN, Civil Appeal No 128 of 2014; [2017] eKLR and UMM v IMM [2014] eKLR the Court has an onerous duty of ensuring that each partner walks away with what he/ she deserves. The Court has the specific duty of pulling the plug on partners who fit the bill of ‘fortune seekers’, ‘gold diggers’, ‘sponsor seeking’, ‘divorce hoping brides’ etc.
26. I am persuaded that the applicant solely financed the purchase and development (construction of rental units) of the subject parcels, that is, Dagoreti/Mutuini. XXXX and Dagoreti/Mutuini/ XXXX. The respondent attempted to surreptitiously transfer the properties into her sole name. When the applicant sought to forestall this her counsel informed him that ‘he was not a party to the transaction’.
27. Despite the respondent’s claim to the property, she has failed to tender evidence establishing financial contribution towards its acquisition. Any claimed non-financial contribution is deemed offset by the substantial contributions of the applicant. I am satisfied that parental responsibility for the minors was shared, and the respondent’s contribution was not sufficiently significant to warrant a share of the property.
28. In any event, parties are bound by their pleadings in her replying affidavit, the respondent simply denied the claim of the applicant she did not lodge a counter claim , she seeks to introduce this prayer in her submissions.
29. Accordingly, I will allow the Petition and pursuant to rule 30 of the Matrimonial Property Rules order as follows-
- a. The property Dagoreti/Mutuini. XXXX and ½ Dagoreti/Mutuini/ XXXX are matrimonial property.
 - b. The Applicant is entitled to 100 % share of the 2 properties, the same to be transferred to the applicant upon payment of all the requisite fees in relation to their purchase.
30. This being a family matter there shall be no order as to costs.
31. Parties are at liberty to appeal, the party exercising their right of appeal to do within 30 days.

SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 8TH DAY OF MAY 2026



P. M. NYAUNDI

JUDGE

In the Presence of

Fardosa Court Assistant

Matiba holding brief for Irungu for Respondent

Ms. Muhanda for Applicant

