



**NSV alias NSR v SV (Family Originating Summons E019 of 2023)
[2026] KEHC 6209 (KLR) (Family) (8 May 2026) (Judgment)**

Neutral citation: [2026] KEHC 6209 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

FAMILY

FAMILY ORIGINATING SUMMONS E019 OF 2023

PM NYAUNDI, J

MAY 8, 2026

BETWEEN

NSV ALIAS NSR PETITIONER

AND

SV RESPONDENT

JUDGMENT

1. Following the dissolution of their marriage by a decree absolute on 25th November 2022, the Petitioner, the former wife of the Respondent, by an Originating Summons amended on 12th November 2025, seeks a declaration that Land Title Number L.R. No. 1870/VIII/201 is matrimonial property, claiming a 50% interest therein. The children of the marriage are adults.
2. The applicant asserts that the subject property was acquired and improved through the joint efforts of both parties during their marriage. In her supporting affidavit, sworn on 23 February 2023, she reiterates this claim and seeks a 50% share of the matrimonial property.
3. In a Reply Affidavit sworn on 13th February 2023, the Respondent disputes the Applicant's claim, asserting that she is not entitled to any share of the property, as she made no contribution to its acquisition or improvement. Although the property was registered in the joint names of his father, the Applicant, and himself, the Respondent contends that his father provided the funds for the purchase, which the Respondent subsequently repaid. He maintains that he was the sole financier of both the acquisition and all subsequent developments on the land.
4. He contends that despite the Petitioner being a qualified dentist with income from employment and a private clinic, she did not contribute these earnings toward the family's welfare, specifically in the acquisition, development, or improvement of the property. Instead, he alleges she utilized her income



- solely for her own benefit, excluding her husband and children, and asserts that she made no direct, indirect, or non-monetary contributions entitling her to a share of the property
5. Through her further affidavits dated 8th January 2024 and 27th March 2024, the Petitioner reiterates her previous averments, firmly asserting that her non-monetary contribution as a homemaker entitles her to a 50% share in the matrimonial property. She further contends that the joint registration of the property serves as conclusive proof of her entitlement, noting that she ceased employment upon the Respondent's insistence.
 6. The respondent has sworn a further affidavit on 29th May 2024, in which he avers that the Petitioner has remained in gainful employment and is also running a dental clinic. He has always been supportive, including purchasing the Dental Chair she uses in her clinic for her. He attaches a note addressed by his parents to 'whom it may concern' as evidence of the loan he got from them towards the acquisition of the home. The note is dated 1st October 1995.
 7. In support of the respondent, Elijah Kairia Kiama has sworn an affidavit on 29th May 2024, stating that he is a former employee of the respondent. He worked as a driver. He avers that while employed, he observed that the respondent took charge of the running of the home as the Petitioner was largely absent. For instance, she was never home when he dropped the children off at school. He was responsible for driving the Children to their extracurricular activities. The Petitioner never accompanied them. She spent long periods away from home, either at her clinic, at her parents', or on early morning runs.
 8. The matter proceeded by way of viva voce evidence. The Petitioner elected not to call evidence; the respondent called two witnesses: the respondent and his former driver, Elijah Kairia Kiama. Both witnesses reiterated the averments in their affidavits on record, which I have set out in detail above.
 9. At the end of the trial, the Parties filed their respective submissions.
 10. The Petitioner's Submissions are dated 5th December 2025. She has also filed rejoinder submissions dated 23rd January 2026. The Petitioner relies on her status as a joint tenant. She submits that the 'register reflects the true legal intention of the parties, joint ownership, and stands as conclusive proof of proprietorship'. The issues for determination, as framed, are-
 - a. Whether the Respondent can claim 100% ownership of the jointly registered matrimonial property on the basis of alleged sole contribution.
 - b. Whether the presumption of equal ownership under joint tenancy applies in the absence of evidence to rebut it.
 11. It is submitted that no evidence has been adduced to the required standard on the sole acquisition of the asset by the Respondent, or on the payment for repairs and improvements to the assets. Further, the Respondent is charged with attempting to adduce evidence in submissions, and that there is no fault in the Petitioner electing not to call evidence, as her case is purely on matters of law.
 12. The respondent's submissions are dated 8th January 2026. He frames the following as the issues for determination-
 - a. What is the effect of the failure by the Petitioner to give oral evidence and avail herself for cross-examination?
 - b. Whether the Petitioner has contributed to the acquisition or improvement of the suit property so as to establish a beneficial interest therein; and



- c. Whether the doctrine of indefeasibility of title is applicable to disputes concerning beneficial ownership is applicable in this case
 - d. What orders ought to issue?
13. On the first issue, it is submitted that the Petitioner, having failed to avail herself for cross-examination, the matter should be determined on the basis of the evidence of the Respondent. In this regard, it is submitted that the Petitioner failed to establish either a monetary or a non-monetary contribution to entitle her to a share of the asset.
 14. Reference is made to the decisions in JOO V MBO; Federation of Women Lawyers (FIDA KENYA) Another (Amicus Curiae) [2023] KESC 4 (KLR); Peter Mburu Echaria v Priscilla Njeri Echaria [2007] KECA 504 (KLR); P N N v ZWN [2017] KECA 753 (KLR); and Federation of Women Lawyers Kenya (FIDA- Kenya) v Attorney General; Initiative for Strategic Litigation in Africa (ISLA) (Amicus Curiae) [2025] KECA 1588 (KLR) in support of the submission that the Petitioner, having made no contribution to the acquisition and development of the property, is not entitled to a share. It is submitted that the presumption of a beneficial interest is rebutted by the Petitioner's non-contribution.
 15. Regarding the final orders sought, reliance is placed on the Court of Appeal decision in Archer & another v Archer & 2 others [2023] KECA 298 (KLR), which supports the prayer for a declaration of the beneficial interests of the parties. In that case, the Court of Appeal found that a constructive trust existed based on common intention and financial contributions, setting aside the trial court's dismissal of the suit and declaring the Appellants held a 25% share each in the properties held by the respondents.

Analysis And Determination

16. Having considered the pleadings filed herein, evidence adduced and submissions filed alongside the relevant law, I frame the following as the issues for determination-
 - a. Whether Land title Number L.R. NO 1870/VIII/201 comprises matrimonial property
 - b. If the answer to (a) is in the affirmative, what is the respective share of the parties herein
 - c. Arising from (b) above what are the consequential orders that should be made?
17. On whether or not the property Land title Number L.R. NO 1870/VIII/201 comprises matrimonial property, 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.
18. It is not in dispute that the property was acquired in 1994. It is also common ground that during the pendency of the marriage, the couple established their matrimonial home on the subject parcel of land. It is also agreed that the parties are registered as joint owners. On account of the foregoing, the property is matrimonial property, and the Court is mandated to issue a declaration on the rights of the parties to the property pursuant to Section 17 (1) of the *Matrimonial Property Act*.



19. 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 on its acquisition.
20. Relevant to the circumstances of this case, Section 14 (b) of the Act provides the following presumption as to property that is jointly registered in the joint names of the spouses-
14. Presumptions as to Property acquired during marriage-
 - (a) ...
 - (b) in the names of the spouses jointly, there shall be a rebuttable presumption that their beneficial interests in the matrimonial property are equal.
21. The Petitioner's case is that this is an open and shut case, the parties are registered as joint proprietors and that therefore she is entitled to a 50 per cent share as the land is held equally. The respondent, on the other hand, argues that the rule of thumb is that a party's share of matrimonial property is based on each party's contribution, whether direct financial, indirect financial or non-monetary. The party claiming contribution has a duty to prove it.
22. The enactment of the *Matrimonial Property Act*, especially the above-cited provision in Section 14(b), is intended to operationalise Article 45 of *the Constitution*, which recognises the family as the natural and fundamental unit of society and the necessary basis of social order. For this reason, the law expressly presumes that, in the case of spouses, joint registration will give rise to a presumption that their beneficial interests are equal. The burden of discharging or disproving that presumption will rest with the party who alleges otherwise.
23. In the English House of Lords Decision *Stack v Dowden* [2007] UKHL 17 it was held that
The burden will therefore be on the person seeking to show that the parties did intend their beneficial interests to be different from their legal interests, and in what way. This is not a task to be lightly embarked upon.
24. It is for this reason that the Petitioner is right in stating that she did not compromise her case at all by relying on the undisputed legal right that she is registered as a joint owner and therefore she has unassailable claim to a beneficial interest to the land and the duty lay with the respondent to discharge it and demonstrate that in the circumstances of their marriage she was not entitled to an equal share.
25. To rebut the presumption of equal shares, the Respondent claims sole acquisition, citing a note from his parents dated 1st October 1995 as evidence of a loan. Although the Appellant disputes the note's authenticity because it was written almost a year after the property purchase, I find, on other grounds, that this note does not substantiate the Respondent's assertion.
26. I uphold the Petitioner's challenge to the note, as it fails to identify the specific plot in question and refers only to a future, intended acquisition at Peponi Gardens. Furthermore, there is no evidence of loan repayment. I find the account to be credible that the Respondent's parents purchased the asset for the couple, and the matrimonial home was established on this parcel.
27. I find that there was a clear intention at the time of acquisition that the property be held equally, and this is reflected in the registration. The respondent contends that the Petitioner's conduct during the pendency of the marriage will disqualify her from a share in the property. She was distracted and eventually hostile towards him, diverting income she earned away from the joint family enterprise, leaving him to shoulder the sole responsibility for providing for the family.



28. His witness supported his claim. I have no reason to doubt the driver. However, as observed by the Supreme Court in the decision of *JOO v MBO* (Supra), citing the English case of *White v White* [2001] 1 AC 596, where Lord Nicholls of Birkenhead held that the court should always ensure a fair outcome when considering the contribution of spouses, stating:

Self-evidently, fairness requires the court to take into account all the circumstances of the case. Indeed, the statute so provides. It is also self-evident that the circumstances in which the statutory powers have to be exercised vary widely ... But there is one principle of universal application which can be stated with confidence. In seeking to achieve a fair outcome, there is no place for discrimination between husband and wife and their respective roles. Typically, a husband and wife share the activities of earning money, running their home and caring for their children. Traditionally, the husband earned the money, and the wife looked after the home and the children. This traditional division of labour is no longer the order of the day. Frequently both parents work. Sometimes it is the wife who is the money-earner, and the husband runs the home and cares for the children during the day. But whatever the division of labour chosen by the husband and wife, or forced upon them by circumstances, fairness requires that this should not prejudice or advantage either party when considering paragraph (f), relating to the parties' contribution.

29. The respondent minimised the contribution of the applicant as it could not be monetised. The parties referred me to the divorce proceedings, and I found an averment at paragraph 36 of the affidavit sworn on 9th April 2021 by the respondent, in which he stated that the Petitioner had given the 2nd-born son KShs 10 million towards the purchase of office space. This one act disproves the picture of a partner who contributed nothing towards the family welfare. It may be that she was an intermittent earner, either as an employee or running her clinic. She never at one time had the financial muscle to match that of the respondent, but this does not erase the intent of the parties at the time of acquisition of the property.
30. In the absence of evidence on the part of the applicant as to her contribution and accepting the evidence of the respondent that for the duration of the marriage the Petitioner adopted an aloofness towards him and what should have been the joint project of progressing the family, alive also to the fact that in distributing matrimonial property the court is careful to recognise the contribution of either party and prevent a party who has literally folded their hands from benefitting from the industry of the other party. I also take into account that the parties were married for 33 years and had two children.
31. Taking all these factors into account, I consider a division of the matrimonial property in the ratio of 30:70 per cent in favour of the respondent reasonable.
32. Accordingly, I will allow the Petition and pursuant to rule 30 of the matrimonial property rules order as follows-
- a. The property Land title Number L.R. NO 1870/VIII/201 is owned by the parties jointly and is hereby vested in them in Common in the ratio of 30:70 in favour of the respondent.
 - b. The Respondent will have the right to buy out the Petitioner. In this regard, the parties will jointly nominate a valuer within 30 days. In the event that the parties are unable to agree on a valuer, the respondent will identify a valuer.
 - c. The valuer appointed under (b) above will prepare a report within 45 days.
 - d. The Respondent will buy out the applicant within 120 days of the presentation of the report.



- e. In the event that the Respondent is unable to buy out the Petitioner, the property shall be sold and the net proceeds shall be distributed between the parties in the ratio of 30:70 in favour of the Respondent.
 - f. Both parties shall execute all documents to facilitate the valuation, sale, and transfer of the property within 14 days of delivery of the same. In the event any party fails to do so, the Deputy Registrar Family Division will execute the same in their place.
33. This being a family matter there shall be no order as to costs.
34. Parties are at liberty to apply, 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

Sheth for Applicant

Mrs. Oduor for Respondent

