



REPUBLIC OF KENYA



KENYA LAW
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JNN v PMN (Civil Appeal 259 of 2019) [2025] KECA 1267 (KLR) (27 June 2025) (Judgment)

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REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPEAL 259 OF 2019
W KARANJA, J MOHAMMED & AO MUCHELULE, JJA
JUNE 27, 2025

BETWEEN

JNN APPELLANT

AND

PMN RESPONDENT

(Being an appeal from the judgment of the High Court of Kenya at Embu (F. Muchemi, J.) dated 17th January, 2019 in HCCC NO. 3 of 2011 (O.S.))

JUDGMENT

1. The subject of this appeal is distribution of matrimonial property.
There is no set formula which can, with scientific exactitude, share matrimonial property, and courts have grappled over the years to find the most fair and just way to resolve the issue when marriages fail to reach their intended conclusion.
2. The parties herein met, fell in love and got married. When they took their vows in church, they did not anticipate that several decades later, they will be at the mercy of the court, waiting to be told what to take away out of what they had gathered together.
3. As at the time the relationship between the parties herein turned awry, the couple had lived together in holy matrimony for 33 years. According to the respondent they had lived blissfully up to 2002 when the appellant started living with another woman as man and wife. This was followed by divorce proceedings upon whose conclusion, the respondent filed an originating summons seeking distribution of the properties they had acquired over those 3 decades. The property was distributed but the appellant herein was aggrieved, hence this appeal.



4. In the impugned judgment, the High Court (F. Muchemi, J.) considered the circumstances of the parties and as stated in her judgment, tried to distribute the property in the least disruptive way. In the penultimate part of her judgment, the learned Judge pronounced herself as follows:

“ 35. In dividing the matrimonial property it is imperative to take into consideration these facts so as to minimise disruption of any of the parties in relation to where they have settled and in regard to their occupations that give them income for their subsistence...

39. I proceed to divide the matrimonial properties between the parties as follows;

40. Plaintiff - PMN -

- i. Mbeti/Gachuriri/xx
- ii. Mbeti/Gachuriri/xxx
- iii. Mbeti/Gachuriri/xxx
- iv. Plot No.xx shauri
- v. Plot No x Gachuriri
- vi. Plot No xx Gachuriri
- vii. Plot No xxx Malindi
- viii. Mbeti/Gachoka/xxx
- ix. Plot No xx Gachuriri

41. Defendant - JNN -

- i. Gaturi/Githimu/xxx
- ii. Gaturi/Githimu/xxx
- iii. Mbeti/Gachoka/xxx
- iv. Nthawa Rianduxxx
- v. Nthawa/Siakago xxx
- vi. Plot No.xx Siakago
- vii. Plot No xxx Malindi
- viii. Nthawa/Siakago/xxx
- ix. Nthawa/Siakago/xxx
- x. Nthawa/Siakago/xxx
- xi. Nthawa/Siakago/xxx
- xii. Plot No xx Siakago

42. CM Mbeti/Gachuriri/xxx



43. Estate of ANK Nthawa/Siakago/xxx.”

5. In a memorandum of appeal dated 16th September 2019, the appellant listed nine (9) grounds of appeal in which he faults the learned Judge for, inter alia, holding that the respondent was entitled to a 50% share of the matrimonial property and in not finding that the respondent was only entitled to the matrimonial property to the extent of her contribution; finding that the respondent contributed to the acquisition of the matrimonial properties in the absence of any evidence to support this; in totally disregarding the provisions of section 7 and 9 of the Matrimonial Properties Act 2013 while arriving at her findings; in distributing the matrimonial properties in a manner that was not equitable and in arriving at findings that were against the weight of evidence; in not finding that the respondent's contribution to the acquisition of the matrimonial properties was only in kind and was way less than 50% of the value of the matrimonial properties and that the respondent was, therefore, only entitled to less than 30% of the matrimonial properties; in not properly applying the principles for division of matrimonial properties; and in distributing property that was not registered in the appellant's name and in which he had no legal or equitable interest and sharing it to him or the respondent as matrimonial property.
6. During the hearing of this appeal on 26th September 2023, the parties were represented by learned counsel, Mr. Wahome Gikonyo for the appellant while Ms. Rose Njeru appeared for the respondent. Both counsel adopted their written submissions which they highlighted briefly.
7. The appellant submitted that while the trial court acknowledged that the respondent did not make any direct financial contribution towards the purchase of the properties and that her contribution was only in taking care of the family properties, children, the appellant and supervising construction, the court still went ahead and made the disproportionate distribution of the matrimonial properties. Placing reliance on J.O.O. -vs- M.B.O.; Federation of Women Lawyers (FIDA Kenya) & another (Amicus Curiae) (Petition 11 of 2020) [2023] KESC 4 (KLR) counsel urged us to make a finding that the trial Judge did not consider what each party had contributed and that the respondent was unfairly given more than she had contributed.
8. It was submitted that considering that the respondent's contribution was only in taking care of the family properties, the appellant and the children then her entitlement of the matrimonial properties should not have been more than 30%. Reliance was made to Peter Mburu Echaria -vs- Priscilla Njeri Echaria [2007] eKLR. We were urged to hold that the respondent was only entitled to 30% of the matrimonial property.
9. In the supplementary submissions filed by the appellant dated 16th September 2023, the appellant urged that if this Court is not persuaded to allow the appeal and dismiss the respondent's claim, then the distribution should be changed to give the respondent;
 - i. Four acres (4) which includes the family house to be excised from Title Number Mreti/Gachuriri/xx which parcel of land measures approximately sixteen (16) acres,
 - ii. Plot number of Gachuriri which is developed with a posho mill;
 - iii. Plot number xx Gachuriri which is developed with two commercial shops and six (6) rear rental rooms; and
 - iv. Half of Plot Number xx, Shauri, Embu Town which is commercial.
10. In opposition, counsel for the respondent submitted that a valuation of the matrimonial properties was never undertaken and that the appellant did not produce any evidence to support his allegation that the



value of the properties awarded to the respondent was 50% of all the matrimonial properties. Further, that even if in the absence of a valuation report, the properties that were awarded to the respondent do not constitute 50% of the matrimonial properties as the trial court awarded the respondent four parcels of land and three plots. It was submitted that the trial court did not take into consideration six (6) parcels of land which are Nthawa/Siakago/xxx, xxx, xxx, xxx, xxx and Mbeti/Gachoka/xxx which were acquired and developed by the parties during the subsistence of their marriage but which the appellant had transferred to EM who the appellant had been cohabiting with.

11. It was submitted that the appellant did not prove that the said EM had made any financial contribution towards acquisition of the said plots and that while the suit was pending before the trial court, the appellant disposed of two (2) other properties namely Mbeti/Gachuriri/xx and xx to a 3rd party. Further it was submitted that the respondent did make substantial contribution towards the acquisition of the properties for the period of over 30 years that she lived with the appellant as man and wife. It was submitted that the appellant confirmed that the respondent was gainfully employed at the time they started cohabiting and that he stopped the respondent from going back to work after she gave birth to their first child and it is most unfair for the appellant to make light the respondent's contribution, because apart from taking care of the properties and even managing the family business, the respondent supervised construction carried out in the parcels of land constituting the matrimonial properties and that there is no evidence that the respondent received any salary for such supervision.
12. Counsel further urged that there is a great possibility that had the respondent continued with her employment she would have over the years risen through the ranks to a senior position as the appellant had done and, in the process, she would have had the financial capability to acquire her own properties but that instead she gave up her career to make a home for the appellant. It was hence submitted that given the circumstances of this case, the distribution of the matrimonial properties was fair and just. Reliance was placed on A.K.K. -vs- P.K.W. [2020] eKLR which reiterated the findings in the case of Muthembwa -vs- Muthembwa [2002] 1KLR.
13. Finally, it was submitted that since the judgement, each party has been in possession and continued utilization of the respective portions awarded to them without interference. That the appellant is now 74 years old while the respondent is 73 years old and it would be just if this long dispute between them is settled so that the parties are able to move on with their respective lives. We are urged to dismiss the appeal.
14. We have considered the record of appeal in its entirety, the submissions, both written and oral, and the law, especially as espoused in the decisions cited by the parties. Undeniably, the division of matrimonial property is never an easy task. As rightly pointed out by the respondent's counsel, there is no formula for division of matrimonial property. However, when called upon to do so, a court must painstakingly take the contribution of each of the spouses into consideration so as to arrive at a just position.

In the decision of Singaporean Court of Appeal in A.N.Y. -vs- A.N.K. [2015], it was held:

The ultimate objective of any approach towards the division of matrimonial assets is to accord due and sufficient recognition to each party's contribution towards the marriage without overcompensating or undercompensating a spouse's indirect contributions - so that the outcome would, in the circumstances of each case, lead to a just and equitable division. Using the structured approach, the court could first ascribe a ratio that represents each party's direct contributions relative to that of the other party, having regard to the amount of financial contribution each party has made towards the acquisition or improvement of the matrimonial assets. Next, to give credit to both parties' indirect contribution throughout the marriage, instead of giving the party who has contributed more significantly than the other



an "uplift" to his or her direct contribution percentage, the court should proceed to ascribe a second ratio to represent each party's indirect contribution to the well-being of the family relative to that of the other. Using each party's respective direct and indirect percentage contributions, the court then derives each party's average percentage contribution to the family which would form the basis to divide the matrimonial assets."

15. We agree. It behooves us to determine firstly, the direct contribution and thereafter proceed to ascribe the second ratio of indirect contributions. Section 2 of the [Matrimonial Property Act](#) defines contribution as follows:

- "2. Interpretation: In this Act, unless the context otherwise requires -
- "contribution" means monetary and non- monetary contribution and includes:
- a. domestic work and management of the matrimonial home;
 - b. child care;
 - c. companionship;
 - d. management of family business or property; and
 - e. farm work;
- "family business" means any business which – is run for benefit of the family by both spouses or either spouse; and generates income or other resources wholly or part of which are for the benefit of the family."

16. In our view, and as reasoned in other decisions of this Court, the 2010 constitutional provision on equality of parties did not envisage the division of matrimonial property on a 50-50 basis. Kiage, JA. in P.N.N. -vs- Z.W.N. [Civil Appeal No. 128 of 2014](#) underscored that fact when he stated:

"I do not think that getting married gives a spouse a free to cash cheque bearing the words "50 per cent." Thus, it is that the [Constitution](#), thankfully, does not say equal rights "including half of the property." And it is no accident that when Parliament enacted the [Matrimonial Property Act](#), 2013, it knew better than to simply declare that property shall be shared on a 50:50 basis. Rather, it set out in elaborate manner the principle that division of matrimonial property between spouses shall be based on their respective contribution to acquisition."

17. Having come to the conclusion that marriage does not confer one to a carte blanche equality in division of matrimonial property, but that this is based on one's contribution, both direct and indirect, the herculean task for us is to ascertain the contribution of each spouse, both monetary and non-monetary. The situation is not made any easier where spouses have lived together for over 33 years. In P.N.N. - vs- Z.W.N. [2017], eKLR, Kiage, JA. surmised:

"The reality remains that when the ship of marriage hits the rocks, flounders and sinks, the sad, awful business of division and distribution of matrimonial property must be proceeded with on the basis of fairness and conscience, not a romantic clutching on to the 50:50 mantra. It is not a matter of mathematics merely as in the splitting of an orange in two for, as biblical Solomon of old found, justice does not get to be served by simply cutting up a contested object of love, ambition or desire into two equal parts. I would repeat what we



said in Francis Njoroge -vs- Virginia Wanjiku Njoroge, Nairobi Civil Appeal No. 179 of 2009; a division of the property must be decided after weighing the peculiar circumstances of each case.”

18. To start with, it is not denied that the appellant and the respondent were both gainfully employed at the time of marriage in 1972. The appellant was a police officer until 2004 when he was fired and the respondent worked at the National Youth Service as a section officer, grade 3 until she resigned in 1973 on getting married. Out of the marriage there was born five children who are all adults. One year into the marriage, the young couple sat down and after weighing the pros and cons, they made a conscious decision to swap the respondent’s salaried job with the underrated one of a home-maker which attracted no definite salary. In our view, it would be a travesty to say that the respondent made no monetary contribution and penalise her for it, while the respondent was part of the decision to swap the “jobs”. A woman who gives up her job to take care of her husband, children, home and family businesses resulting in growth/expansion of the same should get credit for the equivalent of the salary she gave up and the indirect contribution for childbearing, home care etc.
19. It is evident that at the time the two got married, they had no property worthy of mention. However, from the time of the marriage, the properties acquired were registered in the name of the appellant. The properties that are the subject of this cause are as follows: Mbeti/Gachuriri/xx, xxx, xxx, Plot No.xx shauri, Plot No. x Gachuriri, Plot No. 1X Gachuriri, Plot No. xxx Malindi, Mbeti/Gachoka/xxx, Plot No. xx Gachuriri, Gaturi/ Githimu/xxx, Gaturi/Githimu/xxx, Mbeti/Gachoka/xxx, Nthawa/Riandu/xxx, Nthawa/ Siakago xxx, Plot No.xx Siakago, Plot No xxx Malindi, Nthawa/Siakago/xxx, Nthawa/Siakago/xxx, Nthawa/Siakago/xxx, Plot No. xx Siakago and Plot No. xx Gachuriri.
20. It is common ground that some of the properties are developed, and that Mbeti/Gachuriri/xx was the matrimonial home and is registered in the appellant’s name. The appellant told the court that he purchased the same and the respondent told the court that she developed the properties including sourcing for the building materials and supervision of the construction as the appellant was a senior police officer who was rarely at home; that the duty of developing the properties fell on her.
21. For all the 33 years that the respondent was married she was out of formal employment, not because she could not get a job, but because she voluntarily chose to be a full-time home maker and nurturer of her husband and children. She also took up the challenge of building and growing what the husband brought home and that is why their property portfolio grew exponentially from almost nothing when the couple met to what it was when their marriage became unsustainable. She appears to us to have been an industrious woman who gave it her all for the benefit of her family as her husband brought in the capital resources needed to improve the status of the family welfare.
22. Had she squandered the money her husband brought home, there would at the end of the marriage journey have been nothing much to distribute in terms of matrimonial property. We say so bearing in mind that the appellant was a police officer working far from home and the respondent took care of the home and their properties without supervision. We find that the appellant and the respondent worked very hard together to raise their family and to acquire property until the appellant took another wife and ferried away some items from the matrimonial property where the respondent and her children always resided. It is clear that the respondent maintained the home when the appellant was away working as a police officer in various stations. The two lived together for 33 years and various loan applications show that she provided some contribution towards development of the properties. There is no denying that both the appellant and the respondent made monetary and non-monetary contribution towards the properties acquired during coverture and as stated above.



23. Section 14 of the *Matrimonial Property Act* provides:

“ 14. Presumptions as to property acquired during marriage.

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.”

24. In our view, all the properties even though registered in the name of the appellant were held in trust for the respondent with both parties having made direct and indirect contributions towards their acquisition. Although it is clear that the appellant maintained his employment for a much longer period than the respondent, in our view, the two made both direct and indirect contributions towards the purchase and development of the properties. We have no hesitation in coming to the conclusion that these properties are owned in equal shares by the duo. We find the proposal that such an industrious woman who spent 33 of her productive years raising her family and growing its business portfolio in the absence of her husband only merits 30% of the matrimonial property. The trial Judge was correct in the distribution of the property as she did.

25. It is not lost on us that the appellant, in a bid to permanently deprive the respondent of some properties, sold Mbeti/Gachuriri/xx and xx to 3rd parties and transferred Nthawa/Siakago/xxx, xxx, xxx, xxx, xxx and Mbeti/Gachoka/xxx to EM. As these properties were acquired during coverture, and for the reasons stated above, each of the parties herein is entitled to equal shares of the current value of the properties. We cannot allow the appellant’s bid to remove the properties from the reach of the respondent to succeed.

26. In view of our findings above, it is our considered view that 50-50 division was reasonable in the specific circumstances of the instant case. We find no reason to upset the trial courts findings.

To that extent, we hold that this appeal devoid of merit and we dismiss it in it’s entirety.

27. In view of the fact that this is a dispute pitting a former husband and a former wife, we direct that each party bears his/her own costs. It is so ordered.

DATED AND DELIVERED AT NYERI THIS 27TH DAY OF JUNE 2025.

W. KARANJA

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JUDGE OF APPEAL

JAMILA MOHAMMED

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JUDGE OF APPEAL

A.O. MUCHELULE

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR

