



**RJC v RKR & another (Civil Suit E024 of 2021)  
[2025] KEHC 469 (KLR) (27 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 469 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CIVIL SUIT E024 OF 2021  
RN NYAKUNDI, J  
JANUARY 27, 2025**

**BETWEEN**

**RJC ..... APPLICANT**

**AND**

**RKR ..... 1<sup>ST</sup> RESPONDENT**

**BC ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. The Applicant Rose Jepkorir Cheruiyot vide originating summons dated 29<sup>th</sup> October, 2021 expressed to be brought under the provisions of Order 37 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act and Article 45(3) and 68(3) of the Constitution of Kenya, Sections 2, 4, 6, 11,12, 14, and 17 of the Matrimonial Property Act, the applicant seeks orders as follows:
  - a. That an order of injunction do issue stopping and/or restraining the sale, purchase, disposal of and/or alienation of the whole or any part of Pioneer/Ngeria Block X (EATEC) 3XX1, Pioneer Ngeria Block X (EATEC) 12XX8 and Kapseret/Kapseret Block X (Kapseret/4X by the Respondent.
  - b. That a declaration does issue that Pioneer/Ngeria Block X (EATEC) 3XX1, Pioneer Ngeria Block X (EATEC) 12XX8, and Kapseret/Kapseret Block X (Kapseret/4X are matrimonial properties and were acquired by the joint funds and efforts of the parties herein during the subsistence of their marriage and registered in the name of or in the position of the respondent and the same are jointly owned by the applicant and respondent.
  - c. That a declaration does issue that Pioneer/Ngeria Block X (EATEC) 3XX1, Pioneer Ngeria Block X (EATEC) 1XX8, and Kapseret/Kapseret Block X (Kapseret/4X properties are held in trust for the applicant and she has beneficial interest.



- d. Costs of this application be provided for.
2. The summons is supported by an affidavit sworn by RJC, which was the basis of her evidence in chief herein summarized as follows:
    - a. That the Respondent and I got married in the year 1983 under Kipsigis customary law and since then we have been living as husband and wife.
    - b. That we have since established our matrimonial home on land parcel number Pioneer/Ngeria Block X (EATEC) 3XX1.
    - c. That during the subsistence of our marriage, we have been blessed with 4 issues namely;
      - i. JCR
      - ii. The late LC
      - iii. AK
      - iv. AKR
    - d. That during the subsistence of our marriage we have acquired several properties together Pioneer/Ngeria Block X (EATEC) 3XX1, Pioneer Ngeria Block X (EATEC) 12XX8, Kapseret/Kapseret Block X (Kapseret/4X.
    - e. That we have been beneficiaries of his NHIF.
    - f. That Pioneer/Ngeria Block X (EATEC) 3XX1, Pioneer Ngeria Block X (EATEC) 12XX8, Kapseret/Kapseret Block X (Kapseret/4X are currently registered under the Respondent's name.
    - g. That Pioneer/Ngeria Block X (EATEC) 3XX1, Pioneer Ngeria Block X (EATEC) 12XX8, Kapseret/Kapseret Block X (Kapseret/4X are matrimonial properties having been acquired during the marriage period between the applicant and Respondent.
    - h. That during the subsistence of our marriage we started a poultry farm in which we required money to purchase the suit properties which are now registered in the name of the Defendant.
    - i. That the said poultry farming business was a joint venture business in which I was the cashier and collecting the eggs from the farm to the shop.
    - j. That from the said poultry farming business we equally purchased a motor vehicle registration number KAV 0XXH.
    - k. That I am apprehensive the Respondent herein is in the process of disposing off the suit properties and in particular Pioneer/Ngeria Block X (EATEC) 3XX1 in which the prospective buyer attempted to cultivate the same and I communicated to him vide a text message to desist the said cultivation.
    - l. That the defendant is attempting, albeit unlawfully to disposes me of my lands in the pretext that the land was his, merely because his name appears on the proprietary section of the title deed.
    - m. That I have been contributing directly and indirectly in our marriage as I would do all home chores, cultivate the land, look after farm animals, raise the children and he would sell tea leaves



where he could pay school fees for our children and the proceeds from our poultry farming to purchase the suit properties.

- n. That I have made substantive contributions towards the acquisition of the said suit properties and I have a proprietary interest in them.
  - o. That I therefore pray that the court finds that I raised the consideration paid in the acquisition of the suit land and that the Respondent held the suit land under constructive trust for me.
  - p. That I therefore pray that the court issues a declaration that the same are matrimonial property and the Respondent should not dispose them at my detriment.
  - q. That I further pray that the defendant be restrained by an order of injunction from interfering with my peaceful possession and use of the suit lands or any dealings in the suit land without my consent.
3. In cross examination by learned counsel Mr. Lagat for the respondent, the applicant confirmed that the disputed land in question is registered in the name of one Benard Kipsang Chumo, which means that the interest had already been transmitted to a third party. Similarly, the applicant confirmed that she is currently occupying five acres of land bought by the Respondent and where the matrimonial home was established. It is the same parcel of land which is recognized as the family home in which children could visit her or occupy jointly as the beneficiaries of the RKR lineage. It is also a fact from the testimony of the applicant that their presumption of marriage having irretrievably broken down, the respondent moved on and is married to another wife who has also been blessed with other children besides the ones begotten during the subsistence of their marriage. It was a contention on ought that a declaration should be made by this court that the property sold to the 2<sup>nd</sup> Respondent BKC be declared as an illegal conveyance in view that it is the martial estate. it was also her evidence that this particular sale is voidable for reason of lack of consent being sought from her as the spouse to RKR.
4. In addition to her own testimony, the applicant also summoned the evidence of one Daniel Rotich who gave evidence on oath placing reliance on his witness statement dated 14<sup>th</sup> May, 2024. The gist of his evidence was to the effect that he had known both RJC and RR as husband and wife since 1992. He also told the court that the Respondent was an employee of [particulars withheld] Co. Limited and part of their property known as Pioneer Ngeria (EATEC) 3XX1 was acquired by the Respondent during his exit from the company.
5. In further response, the applicant filed a further affidavit in which she deposed that she has made substantive contributions to the said marriage but through deceit and abuse of marital trust the properties they acquired together during the subsistence of their marriage, the Respondent only registered them in his name only. That the Respondent left all the work to her when he went to further his studies at Egerton University whereby she took care of the children, farm and their animals. She used to sell maize from their farm to enable them live well and also bought a poshomill which has been helping them in their marriage to pay bills and cater for their basic needs.
6. She deposed that she has been contributing directly and indirectly in their marriage as she would do all home chores, cultivate the land, look after farm animals, raise the children and he would sell tea leaves where he could pay school fees for their children and the proceeds from their poultry farming to purchase the suit properties.
7. That the averments that she ejected her late mother in-law from parcel known as Title No. Kapsaret/ Kapsaret Block X (Kapsaret)/4X are unsubstantiated and falsified to taint her and she could not



- attend the burial of the mother in-law because the Respondent had threatened her since he left his matrimonial home and she thus feared for her life and requested her siblings to attend the said funeral.
8. That contrary to the Respondent's averments and depositions that parcels number Pioneer/Ngeria Block/ (EATEC) 3XX1 was acquired in 2011 together with one, DC are full of lies as the said parcel was purchased sometimes in 1999 where they have been living and cultivating till late 2020 when the Respondent decided to sell the land without her consent.
  9. That further to the above, they obtained consent to have the land transferred in 2001 from Lonrho Agribusiness East Africa. That contrary to the Respondent's averments that she trespassed and was hostile to the land parcel known as Pioneer/Ngeria Block/ (EATEC) 3XX1, the respondent, without her knowledge sold and transferred the parcel of land to BKC without her consent fraudulently.
  10. She further deposed that she is not privy to the said marriage between the Respondent and DC and the Children listed therein are strangers to her save for the fact that the Respondent indicated he was to marry another lady sometimes in February, 2021 when their marriage started experiencing issues.
  11. That the Respondent's depositions that he was unable to acquire Pioneer Ngeria Block 1/2X from Chamiet Women Group and consented the same to be transferred to her is false. She bought the land from Chemiet Women Group which was initially known as Pioneer Ngeria Block X (EATEC) 6XX8 in 1X9 and the same was subdivided among its members wherein her portion was Pioneer Ngeria Block 1/2X and she has not cleared my debt to have the said parcel transferred to her.
  12. That contrary to the Respondent's sentiment that he solely started a poultry farm to the benefit of our children, I gave all the proceeds to him further his studies and the receipts she brought forward are not mere fabrications since she worked and maintained the business while he was away. That contrary to the Respondent's averments that the suit has been brought to cause disharmony with his aforesaid wife DC, I only want to have the right share of the property we acquired during the subsistence of our marriage and the proceeds from the sale Pioneer/Ngeria 1 (EATEC) 3XX1 without consent.
  13. That contrary to the Respondent's averments that there is non-existence of marriage between them, they have been married, staying together all along in his endeavors as he worked in Eldama Ravine, Tenges, Chemilil, and Turning in Kapseret where we settled and bought land.
  14. She further averred that she stays with all her children in KAPSERET/KAPSERET (Block X (Kapseret) 4X and she uses the proceeds from the poshomill to cater for her basic needs and the children. She concluded that she has brought the case in good faith to claim what is rightfully hers and to stop any attempts of rendering her and her children property less yet she acquired the property with the Respondent during their marriage which she has substantially contributed.
  15. In response to the summons, the Respondent RKR filed a replying affidavit sworn on opposing the summons in its entirety. He deposed as follows:
    - a. That the originating summons is fatally defective, vexatious, frivolous, an abuse of the court process and ought to be dismissed in the first instance.
    - b. That the cause of action in this suit relates to alleged matrimonial property between the applicant and me which cause of action is premised on the Matrimonial Property Act and is couched to the effect that there is existence a monogamous marriage between me and the applicant which isn't true.
    - c. That I have known the applicant since 1984 when we first met and started an on and off relationship that was lucky to be blessed with 4 issues namely:



- i. JCR – 36 years
  - ii. LC – (deceased)
  - iii. AK – 22 years
  - iv. AK – 18 years
- d. That during the entire span of my relationship with the applicant, we have never concluded any marriage ceremony as alleged by the applicant and I have not paid the demanded dowry in full as dictated by the Kipsigis Customary Law.
- e. That far from the applicant's depositions, my on and off relationship with the applicant has never been peaceful or enjoyable and no substantive contribution has ever been made by the applicant to my acquisition of any properties I own.
- f. That the applicant is hot tempered, abusive and intolerant person which attitude has in most occasions subjected me and my entire family to mental and psychological trauma with the most memorable and hurtful one being an unwarranted abuse and ejection of my late mother from my farm containing by measurement approximately five (5) acres located within the parcel known as Title No. Kapsaret/Kapsaret Block X (Kapsaret)/4X2 which I purchased from the proceeds of my pension after my retrenchment in the year 2002 for purposes of settling our children.
- g. That in a further act of despise against me and my family, the applicant refused to attend my late mother's funeral when she passed on in October, 2021.
- h. That in spite of all the troubles that the applicant has subjected me, I have in good faith done my best to provide for my children's basic needs and the act of listing them as my beneficiaries under my NHIF was meant to ensure they would receive good medical attention in the event of need.
- i. That contrary to the applicant's averments and depositions, I have spent a substantive part of my life living in a small house I built at my parents' farm in Kericho County with my wife DC whom I duly married under Kipsigis Customary Law in the year 2008 and who has given me the comfort of a relationship, shown compassion and assisted me in acquiring some of my properties including the parcel known as Title No. Pioneer/Ngeria Block X (EATEC) 3XX1 that we acquired sometime in the year 2011 with the intention of establishing a matrimonial home.
- j. That from my aforesaid marriage to DC, we have been blessed with three issues namely:
  - i. LC – 10 year
  - ii. IK – 6 years
  - iii. RC 9 months
- k. That the applicant has never held and matrimonial interest in the property known as Title No. Pioneer/Ngeria Block X (EATEC) 3XX1.
- l. That I and my aforesaid wife DC were not able to fully settle in the aforesaid parcel known as Title No. Pioneer/Ngeria Block X (EATEC) 3XX1 due to the applicant's constant trespass, interference and hostility thus prompting us to make a decision to sell the same in the year 2020 to BKC who has since acquired an absolute proprietary interest and had the same transferred



in his favor enable us source for another property where we could establish a home and live in peace.

- m. That I am a stranger to the property known as Title No. Pioneer/Ngeria Block X (EATEC) 12XX8 and from the entries in the search attached to the supporting affidavit, the same belongs to one Nicholas Kipngetich Kemboi who is a stranger to me.
- n. That despite our differences with the applicant explained above, I was out of good faith and with the best interests of my children in mind able to acquire a property measuring 0.5 Acres known as Title No. Pioneer Ngeria/Block 1/2X from Chamiet women group and I have since consented to the same being transferred to the applicant to hold in trust for our children's future benefit.
- o. That I have also established a building and bought a posho mill to be used by the applicant to generate income for her own benefit of the children's needs.
- p. That the poultry firm deposed to by the applicant in the pleadings was a venture I solely started and later handed over to the applicant to manage and collect income for her use and for the benefit of our children and despite having a substantial interest in the venture, I never received any proceeds from the said venture during its turbulent existence as a result of the applicant's mismanagement that eventually caused it to be run down. The receipts annexed by the applicant are mere fabrications created by the applicant solely for the purpose of this suit as I have never seen them before.
- q. That no proceeds from the aforesaid poultry farm were never used to purchase any property as alleged by the applicant who in any event could not account for the income and expenses the same was generating and incurring as she mismanaged the venture and kept asking for more money to keep it going while I and my wife and D made our best efforts to keep our income and invest appropriately.
- r. That from my knowledge of the applicant's character, this suit has been brought to court vexatiously with the sole aim of causing disturbance within the family and causing disharmony between myself and my aforesaid wife DC whom the applicant has made it a life mission to ensure she doesn't comfortably settle with me.
- s. That despite the non-existence of any marriage between me and the applicant, I have always aspired to fulfil my moral responsibility having sired children with her and to this end, I have always planned and committed myself to ensuring that the interest measuring five (5) acres I own over that parcel of land known as Title No. Kapsaret/Kapsaret Block X (Kapsaret)/4X is safely registered jointly in both our names to the exclusion of any other person and to ensure that the applicant and the children I sired with her are provided with a safe and secure home where they can engage in income generating activities.
- t. That I also intend to ensure the property known as which I purchased for the benefit of the applicant is registered in my name and I shall do my best to assist her develop the same considering it's a commercial property.
- u. That I do not harbor any intentions of dispossessing the applicant of any property to warrant the issuance of the orders sought.



## Analysis and determination

16. The present dispute centers on matrimonial property rights arising from a relationship that began in 1983 under Kipsigis customary law between RJC (the Applicant) and RKR (the Respondent). At the heart of this matter lies the determination of proprietary interests in three parcels of land: Pioneer/Ngeria Block X (EATEC) 3XX1, Pioneer Ngeria Block X (EATEC) 12XX8, and Kapseret/Kapseret Block X (Kapseret/4X).
17. The Applicant seeks declarations that these properties constitute matrimonial property acquired through joint efforts during their marriage, despite being registered solely in the Respondent's name. She further seeks injunctive orders to prevent alienation of these properties and a declaration of her beneficial interest in them.
18. The present dispute, while initially framed as concerning three parcels of land, effectively centers on a single property; Pioneer/Ngeria Block X (EATEC) 3XX1. A careful examination of the evidence reveals that of the three properties mentioned in the originating summons, one parcel (Pioneer Ngeria Block X (EATEC) 12XX8) belongs to Nicholas Kipnetich Kemboi, a stranger to these proceedings, while the Respondent has expressed his commitment to ensuring that the five-acre interest in Kapseret/Kapseret Block X (Kapseret /4X) is in the process of being jointly registered in both parties' names for the benefit of their children.
19. The claim came on for trial before this court where both parties were in attendance and subjected to cross examination together with their witnesses. At the close of the trial and admission of evidence, their respective legal counsels were permitted to file and exchange written submissions and authorities on this subject matter. However as at the time of preparing this decision, the search in the digital platform failed to provide any evidence of having complied with the directions of this court on filing of submissions. Admittedly there is no prejudice that will be suffered for lack of the filings of submissions as the court is capable of researching on the law and applying to the material evidence and the cause of action as between the applicant and the 1<sup>st</sup> Respondent.
20. It is not very clear from the affidavit evidence whether the applicant and the first respondent formally filed for the dissolution of their marriage in any of the legal forums as defined in Art. 50(1) of the Constitution as read with other enabling statutory framework. What is clear from the reading of the originating summons and the evidence both on affidavit and on oath, this marriage no longer exists as known in law. It can better be described as one which has irretrievably broken down pursuant of which the applicant sought for declarations that she and the Respondent are each entitled to a share in the marital estate. She also seeks other consequential reliefs to realize the value of a share in the said estate.
21. My interpretation of the Matrimonial Property Act as stipulated in Section 6 and 7 a spouse is permitted to apply for a division of property on any of the following grounds having ripened:
  - a. On the grant of a decree on dissolution of a marriage or
  - b. termination of a cohabitation or
  - c. on the grant of a decree nullity of marriage or
  - d. where a husband and wife have separated and there is no reasonable likelihood of reconciliation or
  - e. where one spouse is endangering or involved in dissipation or wastage of the marital estate or seriously diminishing its value by gross mismanagement or by willful or reckless misuse of the property earnings.



22. The applicant/claimant in the case at bar applied for revocation of the property referenced Pioneer/ Ngeria Block X (EATEC) 3XX1 on the basis that it was sold and transferred to one BKC, the 2<sup>nd</sup> Respondent herein by the spouse, RKR (the 1<sup>st</sup> Respondent). The applicant's strong contention was that during their long standing cohabitation with the 1<sup>st</sup> Respondent, they both worked hard to generate earnings which she contributed in the acquisition of the aforesaid estate. She invited this court to make a finding that any such sale carried out with connivance by the 1<sup>st</sup> Respondent under the purchaser was null and void for it deprives her entitlement of the rights which accrue from that immovable property. As reiterated above, this is disputed by the 1<sup>st</sup> Respondent in his affidavit in response and evidence on oath that first and foremost, there was no formal marriage but he acknowledges cohabitation with the applicant dating back to 1992. He further acknowledges that during their subsistence of this relationship, they were blessed with four issues whom she has maintained and sustained by ensuring enjoyment of their rights as defined under the Children's Act and any other applicable law. It was also disclosed by the 1<sup>st</sup> Respondent that their relationship as (spouses) is no longer tenable and they resolved not to continue with it as earlier intended. The 1<sup>st</sup> Respondent admittedly, has moved on and entered into a formal marriage as per the certificate of marriage dated 27<sup>th</sup> July, 2023. Notwithstanding, this second marriage, the cohabitation with the applicant by the 1<sup>st</sup> Respondent was long and they have a shared history together before making a decision to disengage from any spousal relationship contemplated either in the Marriage Act or under the presumption of marriage.

23. Whenever a dispute on distribution a marital estate arises before a court of law, the provisions of Art. 45(3) of the Constitution is to be underscored being the supreme law of the land promulgated in 2010 by the Kenyan people. It stipulates as follows:

“Parties to a marriage are entitled to equal rights at the time of the marriage, during the marriage and at the dissolution of the marriage.”

24. As for this case at bar, there is prima facie evidence of existence of a relationship within the rubric of presumption of marriage. This inference is drawn from the affidavits by both parties to this claim which is not disputed. In essence, their cohabitation in absence of fulfilling the essentials of a customary, civil or Christian marriage ousts any one of them to have the marriage recognized within those definitional terms. Consequently, the demise of that cohabitation gives rise to the issues of marital estate distribution as agitated by the applicant. The regulatory framework which underscores the factors to be taken into account when a court is faced with a claim of this nature is provided for under section 2, 6, 7 and 9 of the Matrimonial Property Act. For avoidance of doubt the provisions are as hereunder:

Section 2

“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:



- (a) is run for the benefit of the family by both spouses or either spouse; and
- (b) generates income or other resources wholly or part of which are for the benefit of the family;  
"matrimonial home" means any property that is owned or leased by one or both spouses and occupied or utilized by the spouses as their family home, and includes any other attached property;  
"matrimonial property" has the meaning assigned to it in section 6; "spouse" means a husband or a wife."

#### Section 6

- "(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.
- (2) Despite subsection (1), trust property, including property held in trust under customary law, does not form part of matrimonial property.
- (3) Despite subsection (1), the parties to an intended marriage may enter into an agreement before their marriage to determine their property rights. (4) A party to an agreement made under subsection (3) may apply to the Court to set aside the agreement and the Court may set aside the agreement if it determines that the agreement was influenced by fraud, coercion or is manifestly unjust."

#### Section 7

"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."

#### Section 9

"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."

25. I have set out these sections in extenso to emphasize the demands of the law that should guide the court in exercising discretion in respect of the cannons as prescribed in Art. 45(3) of the [Constitution](#) and the statutory provisions to determine the interest of an applicant in whom the marital legal estate is vested. The legal principles applicable to the claim by the applicant are those outlined by our superior courts,



for example the Supreme Court in the case of Joseph Ombogi Ongentoto versus Martha Bosibori Ogentoto [2023] eKLR observed inter alia:

“We find the above opinions and findings persuasive and it is our finding that the stated equality under Article 45(3) means that the courts are to ensure that at the dissolution of a marriage, each party to a marriage gets a fair share of the matrimonial property based on their contribution. This is best done by considering the respective contribution of each party to ensure no party is unfairly denied what they deserve as well as ensuring that no party is unfairly given more than what he or she contributed.

Therefore, in the event that a marriage breaks down, the function of any court is to make a fair and equitable division of the acquired matrimonial property guided by the provisions of Article 45(3) of the *Constitution*. To hold that Article 45(3) has the meaning of declaring that property should be automatically shared at the ratio of 50:50 would bring huge difficulties within marriages and Tuiyott, J (as he then was) has explained why above. Noting the changing times and the norms in our society now, such a finding would encourage some parties to only enter into marriages, comfortably subsist in the marriage without making any monetary or non-monetary contribution, proceed to have the marriage dissolved then wait to be automatically given 50% of the marital property. That could not have been the intention of our law on the subject.

In light of the above findings, we are of the view that the question of what amounts to a fair and equitable legal formula for the reallocation of matrimonial property rights at the dissolution of a marriage and whether the same can be achieved by a fixed means of apportionment at a 50:50 ratio or whether such apportionment should be done in light of the circumstances of each individual case is one best answered again by the finding by the Court in Echaria and we have explained why.”

26. The latest Court of Appeal decision in P N N v Z W N [2017] eKLR like the supreme court in the Ogentoto case (supra) undertook an examination of the Constitutional provisions in Art. 45(3) which seem to denote of an entitlement of equal share of the matrimonial property as between the spouses at the time of the marriage, during the marriage and at the dissolution of the marriage. The court went further to enumerate the exceptions that the court could consider if the court was the opinion that the equal share entitlement was unfair.
27. This jurisprudential tapestry was to allow the court to consider inter alia: the needs of each spouse’s contribution, any other circumstances relating to the acquisition, perseveration, maintenance, improvement or use of property or the capacity or liabilities. As a matter of emphasis, both the letter and spirit of the *Constitution* and statute law require the court to compare the respective contributions of the spouse and to award to each a share proportionate to those contributions. It is therefore trite that both Art. 45(3) of the *Constitution* and Sections 2, 6, 7 and 9 of the *Matrimonial Property Act* confers a discretion on the trial court to depart from the rule of equal division of family assets. Having regard to the criteria set out in Section 2 of the Act
28. I have considered the evidence by both the applicant and the 1<sup>st</sup> Respondent it is clear that both of them cohabited together raised the four children quite successfully. It is uncontested that the first respondent worked with EATEC where he had an advantage of earning uninterrupted income until his retirement whereas the applicant’s income was adhoc from farming activities which included rearing of poultry. The documentary evidence submitted by the applicant was the basis upon which she lays her contribution to the acquisition of family assets including the impugned Pioneer/Ngeria Block X (EATEC) 3XX1 now in the hands of a 3<sup>rd</sup> party. Incidentally, there is no probative evidence as to what



quantum or purchase monies which was wholly set aside with the acquisition of the above mentioned property.

29. I find as a fact that this property in question must have been acquired by the 1<sup>st</sup> Respondent during the subsistence of his employment with EATEC or at the end of his contract with the company. I reject the unsupported suggestion of the applicant both in chief and in cross-examination that she contributed to the purchase of this referenced parcel of land from the proceeds and sales secured in the keeping of poultry. Although she opined that the sale of this portion of the family asset was sold without a consent, in my view there has to be demonstrated the injustice wreaked by that sale. Why do I say so? The first respondent has provided evidence on this cohabitation having broken down irretrievably but he met his obligations to maintain and sustain both the applicant and their children without discrimination. The fact of each spouse moving into separate ways is not disputed. The 1<sup>st</sup> respondent further told this court that following the demise of his marital relationship with the applicant, he entered into a second marriage and they have even been blessed with three children. It is not unusual for one spouse to move on to another union in the event the previous marital union has been dissolved or irretrievably broken down.
30. As much as marriage is regarded as a union of equals, there exists substantially compelling reasons for one to prove that contribution on acquisition of family assets was not underpinned on the equality clause. That is the case here. The 1<sup>st</sup> Respondent was on gainful employment with EATEC whereas the applicant's income was dependent on profitability of income earnings from farming activities. Yes, this court was urged to take into account the cash receivables from the farming investments undertaken by the applicant but it falls short to demonstrate the financial or otherwise which directly went into the acquisition of the EATEC property.
31. In the case at bar, the court is permitted by law to consider such other factors or circumstances which in its opinion the justice of the case requires to be taken into account. It is deducible from the evidence tendered before this court that the 1<sup>st</sup> Respondent has already settled the applicant and their children in Pioneer/Ngeria Block X (EATEC) 3XX1 measuring 2.025 Ha. This property happens to be part of the marital estate. There is also evidence by the 1<sup>st</sup> Respondent to have contributed in infrastructural development to improve the value of what can now be described as the matrimonial home for his first family. In the circumstances of this case, the burden of prove shifts to the applicant to rebut the distribution of the matrimonial property as between herself and the spouse in disposing off the shares in the EATEC property which proceeds he used to acquire the Kericho property for occupation and use of the second family as being unreasonable or unjust. This distribution of the family assets as between the applicant and the 1<sup>st</sup> Respondent does import a 50:50 norm and I find no compelling or exceptional evidence to vary it. It is in this context considering the legal effects of financial contribution, contribution to family life, the role of the common intention of the parties and the behavior of the parties, I hold a strong view that the determination of the shares as pleaded in the originating summons in Pioneer/Ngeria Block X (EATEC) 3XX1 which has since been transmitted the 2<sup>nd</sup> Respondent should not be set aside. It is against that background and the admissible evidence by the applicant, I find it difficult that their case has been proved on a balance of probabilities to primarily answer his claim of disturbing the division of the estate so that more shares can be allocated to her which significantly will deprive the 1<sup>st</sup> Respondent of any rights of inheritance in the marital estate. There does not seem to be a common theme in the *Matrimonial Property Act* in which one spouse has to be a lion share or substantially the whole of the estate in exclusion of the other spouse. What may be gleaned from the originating summon and at the stage of assessing the evidential material, if the court was to agree with the applicant's contention, it will be a distribution of a catch all by one spouse of the entire estate.



32. In this significant matrimonial property dispute, the Court has carefully weighed the complex interplay between constitutional provisions and statutory framework governing matrimonial property rights. The case fundamentally revolved around the distribution of marital assets, particularly Pioneer/ Ngeria Block X (EATEC) 3XX1, between RJC and RKR following their separation. After thorough analysis of the evidence and applicable legal principles, the Court finds that while Article 45(3) of the *Constitution* enshrines equal rights in marriage, this does not automatically translate to a 50:50 division of matrimonial property. The Court's determination rests on the understanding that equitable distribution must be based on proven contributions, both monetary and non-monetary, as established under Section 2 of the *Matrimonial Property Act*.
33. The evidence demonstrates that Mr. Ruto has already made substantial provision for the applicant and their children through the allocation of property measuring 2.025 Ha, which includes infrastructural developments for their benefit. The Court finds no compelling evidence to disturb the current distribution of marital assets. The jurisprudential principles from the various decisions by the domestic courts gives the courts wide discretion to divide Matrimonial property as it sees it fit subject to the constitutional imperatives in Article 45 (3) of the *Constitution* and the statutory guidelines. The present legal regime does not provide for the equitable division of property between spouses upon the breakdown of marriage as the basic principle governing the property rights is “you own what you buy” entrenched within the penumbra of monetary contribution in the acquisition of the marital estate.
34. Where there is a dispute as to the ownership of property as it is between the Applicant and the 1<sup>st</sup> Respondent proof of purchase or contribution for the purchase of property in question is required. The emphasis on financial contribution sometimes places spouses or spouse whose duties are mainly confined within the matrimonial home at an obvious disadvantage. It is also not lost by this court that many married couples find themselves in difficulty situations regarding proof of contribution for lack of accountable documents, records, or bank statements. The recognition of common relationships referred to as come we stay, presumption of marriage, and cohabitation with a component of children will have fundamental and salutary consequences in this regard of matrimonial property distribution. As things stand, time has come for the making of agreements between spouses, before, during, or after their marriage or as the case may be in respect of ownership and division of property or properties acquired during the subsistence of the union.
35. From the facts of this case, I do not think I have sufficient evidence from the Applicant to enlarge her shares as submitted towards making a declaration that the questionable estate now in the hands of a bonafide purchaser for value is voidable. I approach this question against the factual matrix of this case that demonstrates that the Applicant in the distribution of the estate with the 1<sup>st</sup> Respondent she has not walked out of the marriage empty handed. The current family home which is wholly owned by the Applicant and her children of the marriage flows from the marital state acquired jointly with the 1<sup>st</sup> Respondent. But be that as it may in the instant case if this court was to act retrospectively to the extent of cancelling the conveyance of a portion of the estate to the 2<sup>nd</sup> Respondent such a decision is likely to occasion an injustice by depriving the 1<sup>st</sup> Respondent of any rights for the division of property acquired during their marital union. For those reasons the originating summons by the Applicant is dismissed for want of merit. I make no orders as to costs.

**SIGNED, DATED AND DELIVERED AT ELDORET THIS 27<sup>TH</sup> DAY OF JANUARY 2024.**

**In the Presence of**

Mr. Langat Advocate for the 1<sup>st</sup> Respondent

Mr. Kibii Advocate for the 2<sup>nd</sup> Respondent



Applicant RJC

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**R. NYAKUNDI**

**JUDGE**

