



**PKM v BNC (Matrimonial Cause E002 of 2024)
[2025] KEHC 4140 (KLR) (28 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 4140 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MATRIMONIAL CAUSE E002 OF 2024
SM MOHOCHI, J
MARCH 28, 2025**

BETWEEN

PKM APPLICANT

AND

BNC RESPONDENT

JUDGMENT

1. The Applicant and Respondent got married on 30th December, 2016. Their union was blessed with 2 issues. Their marriage was however dissolved with the decree nisi absolute being issued on 29th November, 2023 vide Divorce Cause No. E047 of 2023.
2. By Originating Summons dated 9th February 2024 wherein the Applicant seeks the following orders:-
 - a. A declaration that LR NO. Miti Mingi/Mbaruk Block X/XX(Kiungururia) and the developments thereon were purchased and or acquired through the joint efforts of both the Applicant and the Respondent during the coverture and registered in the name of the Applicant are owned both at the ration 75:25 or in such proportions as this Honourable Court may deem fit
 - b. That upon declaration of ownership and ratio of contribution, this Honourable Cort be pleased to order that LR NO. Miti Mingi/Mbaruk Block X/XX(Kiungururia) and all the developments thereon be divided between the parties the ratio of 75:25 or in such manner and proportions as this Honourable Court deems fit and juts.
 - c. That the Costs of the Summons be borne by the Respondent.



Applicant's Case

3. The Applicants case was supported by his affidavit sworn on even date wherein he deposes that he single handedly acquired and developed the suit property and proposed the property be shared between the Applicant and the Respondent at the ratio of 75:25 in his favour despite her not making any contribution.
4. He argued that he has a prima facie case and stands to suffer irreparable loss unless the orders sought herein are not granted whereas the Respondent will not be prejudiced in any way as the favour tilts in his convenience.

Respondent's Case

5. In opposition, the Respondent filed her Replying Affidavit sworn on 15th April, 2024. It was her case that the property is below Kshs 10 million and therefore this Court lacks jurisdiction.
6. In terms of contribution she averred that she was the one that paid the house help to assist her in taking care of the children, she paid for food but the two jointly shared electricity and other household expensed. She also averred that that she nursed the children with little to no emotional support from the Applicant.
7. She further averred that the property is jointly registered in their names and that she obtained a loan of Kshs. 30,000 towards purchase of the property and also sent the Applicant Kshs 100,000 toward the purchase of the property. In 2020 the Applicant commenced construction of the home and she obtained Kshs. 700,000 to construct of the home and spent Kshs 70,000 to construct the site store.
8. That a few months after settling in the home, the Applicant indicated the desire to sell the house and use the income to develop the parcel of land at his ancestral home in Meru, a position that did not sit well with well as she wanted to keep the home. That she obtained a loan of Kshs. 900,000.00 and handed it over to the Applicant for purposes of developing the Meru house.
9. She also averred that she contributed to the acquisition and eventual development of the parcels and the Applicant does not indicate how he came up with the rate in his favour and asks the Court to distributed the property at the ration of 90:10 in her favour.
10. That the Applicant has also failed to inform Court that he bought motor vehicle registration KXX XXXX which was also matrimonial property and subject to division and prays that the same be sold and the proceeds be distributed 30:50 in favour of the Applicant.
11. The Applicant in his Supplementary Affidavit sworn on 26th April, 2024 denied all the allegations by the Respondent that she paid the house help. He denied the Applicant ever sending him money for the purchase of the property and the only money she sent was Kshs. 30,000 which he refunded in two installments on 1st and 7th February 2021.
12. He paid the purchase price in two installments of Kshs 200,000 and 600,000 and a sign of being a good husband included her name in the title. That he obtained monies between 4th September, 2020 and 29th January, 2021 from his employer towards the construction.
13. He argued that as a father and husband, he met all bills. That the amount of Kshs. 900,000 was for a different project not subject of this suit and cannot be considered for purposes of distribution.



14. The Respondent on the other hand swore a Supplementary Affidavit on 14th October, 2024. She conceded that everyone contributed to the acquisition and development of the property and added that it is not possible to know the exact contribution that was made by each party.

Applicant's Submissions

15. The Applicant submitted that by virtue of Sections 6 and 14 of the *Matrimonial Property Act*, the subject property and its developments thereon are matrimonial property.
16. The Applicant cited the Court of Appeal decision in MEK vs GLM [2018] eKLR and the Supreme Court decision in JOO V MBO; Federation of Women Lawyers (FIDA Kenay & Another [2023] KESC 4 (KLR) to submit that the Court should disregard the position that distribution of matrimonial property between spouses is subject to proof of direct contribution. That he singlehandedly purchased the property and developed it and although they both shared the responsibility over the children, the Applicant took the lion's share hence his entitlement to 75% thereof.

Respondent's Submissions

17. The Respondent also submitted in the affirmative that the property constitutes matrimonial property and relied on the case of P.O.M vs M.N.K [2017] eKLR.
18. On contribution the Respondent submitted that pursuant to Section 2 of the *Matrimonial Property Act* she made both non-monetary and monetary contributions towards the marriage, purchase and development of the matrimonial property. She relied on the case of JOO v MBO [2023] KESC 4 KLR), to submit that she has proved contribution.
19. The Respondent proposed that the proceeds of the sale of the matrimonial properties be divided at the ratio of 90:10 in her favour or in the alternative the parties register a trust and hold the property in trust from their children. That motor vehicle registration number KXX XXXX be sold and its proceeds be divided in the ration of 30:0 in favour of the Applicant for having been acquired the Applicant during the subsistence of the marriage.

Analysis and Determination

20. I have considered the Originating Summons and the Response. I have also considered the arguments by the parties in their respective submissions. Before everything else the Court has to address the question of jurisdiction.
21. The Respondent was of the view that this Court lacked jurisdiction due to the fact that the value of the subject property was less than Kenya Shillings 10 million which meant the pecuniary jurisdiction was the reserve of the Magistrates Court. The Applicant was silent on that issue.
22. The issue of jurisdiction was addressed by the Supreme Court of Kenya in the case of Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] KESC 8 (KLR) as hereunder:-

“(68) A Court’s jurisdiction flows from either *the Constitution* or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by *the constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not



one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings. This Court dealt with the question of jurisdiction extensively in, In the Matter of the Interim Independent Electoral Commission (Applicant), Constitutional Application Number 2 of 2011. Where *the Constitution* exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a Court of law beyond the scope defined by *the Constitution*. Where *the Constitution* confers power upon Parliament to set the jurisdiction of a Court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law.”

23. Rule 6 (1) of the Matrimonial Property Rules provides that:-
- 1 Court to which application may be made
 2. An application to enforce a claim relating to matrimonial property may be made in any proceedings under the Act—
 - a. to the High Court in any case where the value of the matrimonial property which is the subject matter of the claim exceeds the pecuniary jurisdiction of a magistrate's court; or
 - b. to a magistrate's court having civil jurisdiction to adjudicate matters within the court's pecuniary jurisdiction.
24. It is settled that jurisdiction goes to the root of the matter. Without jurisdiction a Court of law has no business adjudication over a matter and has to down its tools.
25. Once a Court of Law is confronted with a jurisdictional question it is the duty of the Court to interrogate the issue and ascertain and or discern whether it is seized with the jurisdiction or not. The Respondent only averred in paragraph 2 of the Replying Affidavit that the suit property is not within this Court's jurisdiction. The issue of jurisdiction has not been addressed anywhere else in these proceedings.
26. The value of the subject property herein is in question. Pecuniary jurisdiction is not something that can be determined on affidavit evidence to dispose of an application. The said evidence has to be accompanied by an assessment of valuation to ascertain the value of the property in order for the question of jurisdiction to be laid to rest.
27. For good measure it is imperative to determine the value of the property before the Court determines whether it is seized with jurisdiction or otherwise.
28. Consequently, and in the premises, judgement in this matter shall be held in abeyance until the value of the property in question is determined. In this regard, the Court proceeds to and makes the following orders:
- a. An Order is hereby issued directing that a comprehensive valuation of the suit properties referenced LR NO. Miti Mingi/Mbaruk Block X/XX(Kiungururia) be conducted by a government valuer and the valuation report be deposited with the Court within Sixty (60) days from today.
 - b. Costs of the valuation shall be borne by the Applicant.



DATED, SIGNED AND DELIVERED AT NAKURU ON THIS 28TH DAY OF MARCH, 2025

MOHOCHI S. M

JUDGE

