



**JNN v TNG (Family Originating Summons E024 of 2022)  
[2025] KEHC 9260 (KLR) (Family) (27 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 9260 (KLR)

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

**FAMILY ORIGINATING SUMMONS E024 OF 2022**

**PM NYAUNDI, J**

**JUNE 27, 2025**

**IN THE MATTER OF THE MATRIMONIAL PROPERTY ACT 2013.**

**BETWEEN**

**JNN ..... APPLICANT**

**AND**

**TNG ..... RESPONDENT**

**JUDGMENT**

1. The Originating Summons dated 30<sup>th</sup> March 2022 is brought by the Applicant against the Respondent, and seeks the following orders;
  1. That a declaration do issue that all the underlisted properties which are registered in the name of the Respondent solely are held beneficially and in trust for the Applicant: -
    - a. Land Parcel No. KJD/Kipeto/XXXX.
    - b. Land Parcel No. Ngong/Ngong/XXXXXX.
    - c. Land Parcel No. Dagoretti/Riruta/XXXX.
    - d. XXX XXXX Toyota.
    - e. Githurai Tinganga Plot XXX LR No. XXXX.
  2. That the court do issue a declaration that the listed property known as Land Parcel Ngong/Ngong/XXXXXX which is registered in the name of the Applicant is solely owned by the Applicant and is not matrimonial by dint of the fact that it is a mortgage and the applicant continues to solely pay the mortgage and pay for utility bills for the same to date.



3. That an order do issue declaring that 50% of the shares or such other or higher proportion of the property listed below are held by the Respondent in trust and for the beneficial interest of the applicant.
  - a. Land Parcel No. KJD/Kipeto/XXXX.
  - b. Land Parcel No. Ngong/Ngong/XXXXX.
  - c. Land Parcel No. Dagoretti/Riruta/XXXX.
  - d. XXX XXXX Toyota.
  - e. Githurai Tinganga Plot XXX LR No. XXXX.
  - f. THAT costs of the summons be provided for.
2. The Summons was supported by an Affidavit of even date sworn by the Applicant. She filed a Supplementary affidavit dated 4<sup>th</sup> November 2024.
3. The Respondent filed a Replying Affidavit sworn on 16<sup>th</sup> August 2024.

#### **Applicant's Case.**

4. The Applicant states briefly that she and the Respondent got married on 29<sup>th</sup> August 1992 at Karen Catholic Church. Their union was blessed with two children: MMN who was born on 4/9/1992 and CGM who was born on 21/10/1997. Their marriage has since broken down and there is a pending suit for divorce in Milimani Divorce Cause No. E509 of 2021. During the subsistence of their marriage, she purchased property known as Land Parcel No. Ngong/Ngong/XXXXX which is registered in her name. She took a mortgage and built the house without the help of the Respondent. She has been servicing the mortgage alone up to date.
5. The Respondent on the other hand purchased the following properties: Land Parcel No. KJD/Kipeto/XXXX; Land Parcel No. Ngong/Ngong/XXXXX; Land Parcel No. Dagoretti/Riruta/XXXX; XXX XXXX Toyota and Githurai Tinganga Plot XXX LR No. XXXX which are all registered in his name. They jointly started a company known as Tamu Venture Limited which does catering business and she has been solely running it and purchasing catering equipment. Githurai Tinganga Plot XXX LR No. XXXX was acquired by the Respondent through mutual consent. She then constructed a semi-permanent structure but later on put up a permanent structure without the Respondent's input. That she took care of the home and the children while the Respondent resorted to drinking, not providing family upkeep and was abusive. She asked the court to hold that the properties purchased and registered in the Respondent's name are matrimonial property.
6. In her supplementary affidavit sworn on 4<sup>th</sup> November 2024, she stated that the Respondent has been collecting Kshs. 40,000 per month as rent from Dagoretti/Riruta/XXXX. He also collected rent from Githurai Tinganga Plot XXX LR No. XXXX for 8 years. He put up 15 rental units in Ngong/Ngong/XXXXX using proceeds from Tamu Ventures, Tamu Café (CBD and Ngong). He withdrew money held in the business accounts without informing her. That the funds held in the joint accounts and shares held in Safaricom should also be shared equally. She argued that the respondent purchased the properties using money from their joint ventures.

#### **Respondent's Case.**

7. He concedes that the applicant and him were married and that their union blessed with two children. The marriage has since broken down and there are divorce proceedings pending before Court. He



further confirms that the following properties were acquired during the pendency of the marriage and registered in his name; Land Parcel No. KJD/Kipeto/XXXX; Land Parcel No. Ngong/Ngong/XXXX; Land Parcel No. Dagoretti/Riruta/XXXX; XXX XXXX Toyota and Githurai Tinganga Plot XXX LR No. XXXX.

8. The other assets known as Ngong/Ngong/XXXX is registered in the name of the applicant. It was the matrimonial home. In addition, the parties have a business Tamu Venture Limited which is operated by the applicant. They agreed to hold the properties in trust for each other. He is agreeable that all the properties owned by both parties are matrimonial properties and they should be shared equally. He argued that the applicant owns a car, XXX XXXX and several plots and bank accounts operated during their coverture which she has not disclosed to the court. He asked the court to compel her to disclose them and they be shared equally.

### **Applicant's Submissions.**

9. The Applicant identified four issues which she called upon the Court to determine:
  - i. Whether the listed properties registered in the sole name of the Respondent are held beneficially and in trust for the Applicant
  - ii. Whether Land Parcel Ngong/Ngong/XXXX is Matrimonial Property.
  - iii. Whether 50% or such higher proportion of the Shares held by Tamu Ventures Limited should be granted to the Applicant.
  - iv. Whether the Applicant Contributed to the Acquisition of the properties--a. Land Parcel no. KID/Kipeto/1XXXX. b. Land Parcel no. Ngong/Ngong/XXXX c. Land Parcel no. Dagoretti/Riruta/XXXX d. XXX XXXX Toyota. e. Githurai Tinganga plot XXX L.R no.XXXX.
10. The Applicant submitted that the properties were acquired during the subsistence of the marriage and the same was held in trust by the Respondent. That she contributed indirectly by managing the home and taking care of the children.
11. She further submitted that she acquired Ngong/Ngong/XXXX solely and has been servicing the loan to date. She argued that in such a case, although the property qualifies as matrimonial property, the property should solely vest in her. I was referred to the decision in the case of PWK v JKG [2015] KECA 535 (KLR).
12. It was her submission that she was entitled to 50% shares in Tamu Ventures Limited. She run catering business and had joint accounts with the Respondent. That the fact that it was a company, it does not take away its matrimonial nature. She sought to rely on the decision in PWK v JKG [2015] KECA 535 (KLR).
13. On contribution, the applicant submitted that her contribution was non-monetary which is recognised in matrimonial disputes. She sought to rely on the decision in MW v AN [2021] eKLR to buttress her point.

### **Respondent's Submissions.**

14. The Respondent identified the following three issues for determination;



- i. Whether the underlisted properties being KJD/Kipeto/XXXX, Ngong/Ngong/XXXXX,Ngong/Ngong/XXXXX,Dagoreti/Riruta/XXXX, XXX XXXX Toyota and Githurai Tinganga Plot XXX LR Number XXXX constitute matrimonial property.
  - ii. Whether the court should issue 50% or such other or higher proportion of the shares or such other or higher portion of Tamu Ventures Limited shares to the Applicant.
  - iii. Who bears the costs of this suit.
15. Referring to sections 2 and 6 of the Matrimonial Properties Act, the Respondent submitted that all the properties mentioned are matrimonial properties as they were acquired during the subsistence of the marriage. He argued that he made indirect contribution towards the acquisition of Ngong/Ngong/XXXXX which is registered in the name of the Applicant by paying school fees and utility bills in the house. He asked the court to consider both monetary and non-monetary contribution of both parties. He relied on the decision in MNH v FHM [2018] eKLR.
16. The Respondent submitted that the Applicant has failed to prove her contribution or share in Tamu Ventures Limited. That she did not avail to this court the current search of the company. The fact that she produced a CR12 and receipts showing purchase of catering equipment is not proof of ownership of the company.

#### **Analysis And Determination.**

17. I have looked at the respective pleading of the parties, their documentary evidence and their submissions. The following are the issues for determination;
- i. Whether the suit properties are matrimonial properties?
  - ii. If they are, what contribution did the parties make towards their purchase and or improvements?
  - iii. How should the properties be distributed?
  - iv. Whether or not costs should be awarded to the successful party

#### **Whether the suit properties are matrimonial properties.**

18. Section 6 of the *Matrimonial Property Act* defines ‘matrimonial property’ as:
- 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.
19. Under Section 2 of the Act, ‘Matrimonial home’ has been defined as:-
- 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.



20. In the case of *T.M.V. vs F.M.C* [2018] eKLR, I opined that:-

“...for property to qualify as matrimonial property, it ought to have been acquired during the subsistence of the marriage between the parties unless otherwise agreed between them that such property would not form part of matrimonial property.”

21. In the Ugandan High Court, Mwangusya J. in *Paul Kagwa vs. Jackline Muteteri* (Matrimonial Cause-2005/23) [2006] UGHC 17 (18 May 2006) while citing Bossa, J in *John Tom Kintu Mwangwa vs. Myllious Gafafusa Kintu* (Divorce Appeal No. 135 of 1997) (unreported) expressed himself as hereunder: -

“On the last issue of whether the petitioner is entitled to matrimonial property, I clearly believe that she does and I so hold. Matrimonial property is understood differently by different people. There is always that property which the couple chose to call home. There may be property which may be acquired separately by each spouse before and after marriage. Then there is property which the husband may hold in trust for the clan. Each of these should in my view be considered differently. The property to which each spouse is entitled is that property which the parties choose to call home and which they jointly contribute to.”

22. In this case the parties agree that the properties herein were acquired during the marriage and therefore, I hold that KJD/Kipeto/XXXX, Ngong/Ngong/XXXXX,Ngong/Ngong/XXXXX,Dagoreti/Riruta/XXXX, XXX XXXX Toyota and Githurai Tinganga Plot XXX LR Number XXXX are matrimonial properties. I am persuaded that the matrimonial home of the parties was on Ngong/Ngong/XXXXX.

### **What contribution did the parties make towards their purchase and or improvements?**

23. Section 2 of *Matrimonial Property Act* provides,

“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;

24. Section 7 *Matrimonial Property Act* provides;

Ownership of matrimonial property 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.

25. Both parties are in agreement that KJD/Kipeto/XXXX, Ngong/Ngong/XXXXX,Ngong/Ngong/XXXXX,Dagoreti/Riruta/XXXX, XXX XXXX Toyota, and Githurai Tinganga Plot XXX LR Number XXXX are all registered in the name of the Respondent except for Ngong/Ngong/XXXXX which is registered in the applicant's name. It is agreed that the applicant took out a mortgage to buy and develop the property.
26. The applicant avers that the properties purchased and registered in the name of the respondent were acquired from income of their joint ventures. It is conceded by both parties that one such venture is the Tamu Ventures Limited. The respondent rebuffs the applicant's claims to shares in Tamu Ventures as the applicant has not led evidence to show the shareholding in Tamu Ventures and her contribution towards the acquisition of the shares.
27. It is the applicant's case that the respondent's share in the matrimonial properties be reduced by the sums he withdrew from their joint accounts without reference to her.
28. Section 14 of *Matrimonial Property Act* provides where matrimonial property is acquired during marriage, there shall be a rebuttable presumption that the property is held in trust for the other spouse.
29. In the case of Njoroge vs. Ngari [1985] KLR, 480, the court held that-

“if a matrimonial property is being held in the name of one person, even if that property is registered in the name of that one person but the other spouse made contribution towards its acquisition, then each spouse has proprietary interests in that property.”
30. Section 7 states that 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. Both parties told the court that their contribution to the acquisition, development of the properties registered in the name of the other spouse was non –monetary. Both argue that they took care of the children and the home and paid bills that enabled the other spouse undertake investments.
31. The applicant has shown evidence that she has been servicing the mortgage she took for Ngong/Ngong/XXXXX. The respondent did not controvert the assertion that he had withdrawn money from the joint account (s) held by the parties and this is a factor to be considered when it comes to distribution. The sums are Kshs 7, 761, 848. 08 from Haba na Haba Account and Kshs 73840 from the Equity Bank Account. (Total withdrawn is Kshs 7835688) Her share of this amount calculated at 50 per cent will be Kshs 3917844
32. I do not consider that the Applicant has laid the basis for a claim in the shares of Tamu Ventures Limited. The business is separate from the Company as an entity, it cannot be the basis of her claim to shares. Further she claims a stake in the bank accounts, this matter is raised in submissions and not the Originating Summons. There is nothing to show that beyond the sums she is claiming were withdrawn by the defendant, I will consider that sum in the distribution as her assertion that the money was deposited on account of businesses they run together has not been challenged.
33. The Respondent states that all the property be divided equally between the spouses. I am satisfied that during the pendency of the marriage the parties worked to acquire properties. They both made monetary and non- monetary contributions. The value of non – monetary contributions may be difficult to quantify but what is indisputable that non- monetary contributions (taking care of



sick relatives, taking care and nurturing children, providing companionship) provide the context, motivation and stability within which spouses are able to venture out and undertake projects for the welfare of the family.

34. When as now, Courts are forced to define what each party salvages from the broken marriage, consideration of non- monetary contribution is key. Based on the facts foregoing I find as follows-
1. The following assets comprise the matrimonial property KJD/Kipeto/XXXX,Ngong/ Ngong/XXXXX,Ngong/Ngong/XXXXX,Dagoreti/Riruta/XXXX, XXX XXXX Toyota, and Githurai Tinganga Plot XXX LR Number XXXX as they were acquired during the pendency of the marriage.
  2. On account of the financial and non-financial contribution each spouse is entitled to 50 per cent of each asset as their share of the matrimonial property.
  3. The matrimonial home situated at Ngong/ Ngong/ XXXXXX will vest in the applicant.
  4. The 50 per cent share of the respondent in Ngong/ Ngong/ XXXXXX shall be recouped by Ngong/ Ngong/ XXXXXX vesting solely in the respondent.
  5. The parties shall undertake valuation of the properties. The share of the Respondent to be reduced by the sum of Kshs3917844.
  6. The Respondent shall have the right to buy out the Applicant from the properties that are registered in his name within 120 days from the date hereof, except for Ngong/Ngong/ XXXXXX which vests in him solely.
  7. In default, the properties to be held in common in the joint names of the Applicant and the respondent. The Respondent will sign the papers transferring the assets (including the motor vehicle) within 21 days of presentation, in default the Deputy Registrar to execute the forms to facilitate the transfer.
35. Owing to the relationship between the parties there shall be no order as to costs.

**SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 27<sup>TH</sup> DAY OF JUNE, 2025.**

**P .M NYAUNDI**

**JUDGE**

In the presence of:

Ms. Odiya for Applicant

Mulaku holding brief for Ms. Kagia for Respondent

Fardosa Court Assistant

