



REPUBLIC OF KENYA



KENYA LAW
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Mbugua v Kamuyu (Civil Suit 7 of 2018)
[2025] KEHC 9261 (KLR) (Family) (27 June 2025) (Judgment)

Neutral citation: [2025] KEHC 9261 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
CIVIL SUIT 7 OF 2018
PM NYAUNDI, J
JUNE 27, 2025

BETWEEN

MERCY MUTHONI MBUGUA APPLICANT

AND

WILFRED NGURAYA KAMUYU RESPONDENT

JUDGMENT

1. The Applicant herein, took out Originating Summons dated 31st January 2018 against the Respondent seeking the following:
 1. Whether the Defendant's marriage to the plaintiff since the year 1993 has vested in the plaintiff proprietary interest (and to what extent, and if so) in terms of the Married Women's Property Act and if so, whether the Plaintiff is entitled to half a share or monetary compensation by way of her share of proceeds of sale thereof with respect to their matrimonial home/property known as Kirichwa Greens Management Limited being registered in the form of equal shares such that the Defendant is subsequently ordered to cede such plaintiff's share from the said property.
 2. The defendant to pay costs of these proceedings and incidentals thereto.
2. The Summons was supported by the Affidavit of even date sworn by the Applicant.
3. The Respondent entered appearance in the matter but did not file a response to the summons.
4. The Applicant states briefly that she and the Respondent lived as husband and wife from 1993 until 2014 when he deserted their matrimonial home. Their marriage was blessed with two daughters. The Respondent instituted divorce proceedings in Nairobi Divorce Cause No. 56 of 2017. During the subsistence of their marriage, they acquired properties known as Kirichwa Greens in Kileleshwa



Mandera Road, 2 bedroomed apartments (11 houses), 1 bedroomed apartments (5 houses) an office, ½ acre piece of land in Ruiru, Estate Block 1, a 3 bedroomed apartment in Lavington Mbaazi Road, Pambo Lane and a Subaru Forester. That she contributed directly and indirectly towards the purchase, acquisition, construction and development of these properties. That the Respondent disposed of some of the properties. She argued that the Respondent should be compelled to produce bank statements of proceeds of rent collected. She urged the court to allow her Originating Summons.

5. The summons was canvassed by way of viva voce evidence.

Evidence.

6. The Applicant's evidence is that she and the Respondent got married in 1994. Their marriage was blessed with two daughters who are now adults. Their marriage was dissolved in 2017. The Respondent kicked her out of the matrimonial home in 2020. During the subsistence of their marriage, they acquired properties known as Kileleshwa Apartments, a house in Lavington and a plot in Ruiru. She contributed towards the marriage by taking care of the children and the home. She was a director in Kirichwa Green Management Limited and managed the properties. She asked the court to give her a share in Kirichwa Green Management Limited and also her share of the properties acquired.
7. During cross –examination, she stated that she was not working when she was in the marriage; she has been sick for 13 years. The Respondent has been providing for the children. She is a shareholder in Kirichwa Greens Limited as evidenced by the CR12 dated 18th May 2017. The properties are registered in the company. She denied the allegation that she forged a document to show that she is a shareholder in the company. The DCI are investigating that allegation. She is not aware whether the properties are still registered in the Respondent's name or they have been sold. She did not provide title numbers for the properties mentioned in the originating summons. The Respondent bought for her a Subaru forester but it is registered in her name. The Respondent furnished her parents' home and built a permanent wall. He paid her medical bills when she was ill.
8. In re-examination, she stated that she set up the company with the Respondent. She is not aware that the CR12 was changed.
9. The Respondent testified as RW1. His evidence was that Kirichwa Greens Management Limited does not exist. He also denied the existence of Kirichwa Apartments. He stated that he is not a director of Kirichwa Green Management Limited. According to him, the applicant has never been a share holder in the company. That the CR12 produced by the applicant is a forgery and is under investigation by the DCI. He denied ownership of the properties mentioned by the Applicant. The Subaru Forester is registered in the Applicant's name. The applicant did not contribute towards the acquisition of his properties. He takes care of the financial needs of the two children.
10. During cross-examination, he stated that he and the applicant lived in separate houses occasionally. The Applicant did not take care of their home or children fully; there were house managers. During the subsistence of the marriage, they did not acquire property. Ruiru East Block 1 is owned by his mother. The applicant has never worked.
11. In re-examination, he stated that the directors in Kirichwa Green Management Limited are his mother and himself.

Applicant's Submissions.

12. In her submissions, the applicant that the couple jointly acquired the suit properties during the subsistence of the marriage. She cited Section 6 of the *Matrimonial Property Act* and submitted that



the properties meet the threshold of what constitutes “matrimonial property”. She submitted that the status of the properties is unknown and if they have been sold, the applicant should be compensated by way of cash.

13. She submitted further that she made direct monetary contribution as well as indirect contribution by bearing kids with the Respondent, managing to keep the family together and to support her husband emotionally thus helping him to go on with supporting the family financially.
14. Counsel further cited Article 45(3) of *the Constitution* and submitted that the Article is a basis for apportionment and division of matrimonial property.

Respondent’s Submissions.

15. On his part, counsel for the Respondent submitted that the Applicant did not prove ownership of the properties she alleges are matrimonial properties. The Respondent denied owning any properties or the company mentioned by the applicant. He further Cited Section 6 of the *Matrimonial Property Act* and submitted that the Applicant had not proved her contribution or her share in the company where her nomination was under investigation. Reliance was placed on the decision of AKM v NNN (20191 eKLR and NGV v CNV also known as CHM (Matrimonial Cause 6 of 2021) [20221 KEHC 16645 (KLR) (6 December 2022) (Judgment).
16. Counsel submitted that the applicant’s claim on the company assets and shares falls outside the jurisdiction of this court. It was argued that the Respondent and his mother are the shareholders of the company.

Analysis And Determination

17. The issue for determination is whether this Originating Summons has merit.
18. The Applicant did not avail properties of the properties that she claims ownership of. From her evidence I deduce that she seeks a share of the properties that are registered in the name of the company known as Kirichwa Greens Management Limited. She contends that she has a share in the Company, the authenticity of CR12 that is the basis of her claim is said to be under investigation of the DCI.
19. The question then begging an answer is, can this court share out assets held in the name of the company? It is trite law that a limited liability company is a separate legal entity capable of suing or being sued and that division or distribution of its own assets can only be done under the *Companies Act*. It is beyond the jurisdiction of this Court to make the orders sought.
20. While dealing with a similar scenario, the court in the case of SNK vs MSK & 5 others [2015] eKLR had this to say;

‘The learned counsel did not give due regard to the settled principle of company law in Salomon vs Salomon (1897) AC that a company is a separate legal person from its share and directors’.

At paragraph [23] the court went further to state that orders against a company can only be brought against a company under section 211 or 222(2) of the *Companies Act*. This position was restated in JWC vs PBW (2017) eKLR and Nancy Wambui Ndichu vs Steve Ndichu Mwaura Nairobi HCCC No 43 of 2009(OS) in which the court held that division of matrimonial property does not include shares nor properties owned by a company as a company is a separate legal entity and that the court with jurisdiction is the commercial division of the high court.



21. In view of the above case law, there is no doubt that the company in this case Kirichwa Greens Management Limited is a legal entity capable of suing or being sued. Any claim against the company including shares can be ventilated before commercial division. Accordingly, all assets or accounts held in the name of the company are subject to the rules and regulations under the Memorandum of association and Articles of Association of the company or generally the law governing limited liability companies (the *Companies Act*). For this reason, I find that such company property or funds do not constitute matrimonial property available for division.
22. Also see NGV v CNV also known as CHM (Matrimonial Cause 6 of 2021) [2022] KEHC 16645 (KLR).
23. As stated earlier the assets as enumerated by the applicant were not sufficiently identified as to enable the Court make any vesting orders as sought.
24. Accordingly, the entire Originating Summons dated 31st January 2018 is dismissed.
25. Each party to bear their own costs.

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 27TH DAY OF JUNE, 2025.

P. M NYAUNDI

JUDGE

In the presence of:

Fardosa Court Assistant

Omondi for Mrs. Kahindi for Applicant

Ms. Ndirangu for Respondent

