



**LWN v JKN (Matrimonial Cause E001 of 2024)
[2025] KEHC 11478 (KLR) (30 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11478 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
MATRIMONIAL CAUSE E001 OF 2024
RM MWONGO, J
JULY 30, 2025**

BETWEEN

LWN APPLICANT

AND

JKN RESPONDENT

JUDGMENT

1. Through an OS dated 05th February 2024, the applicant seeks for the following orders:

1. That a declaration does issue that the properties known as
 - a. Kagaari/ Kanja/1905,
 - b. Kagaari/ Kanja/7195,
 - c. Kagaari/ Kanja/5229,
 - d. Kagaari/ Kanja/ 3554,
 - e. Kagaari/ Kanja/4447,
 - f. Kagaari/ Kanja/6553,
 - g. Kagaari/ Kanja/5110,
 - h. Kagaari/ Kanja/7793,
 - i. Kagaari/ Kanja/5088,
 - j. Kagaari/ Kanja/ 4882,
 - k. Gaturi/Nembure/4150,



- l. KCB Bank Account No. 13****478 and
- m. Motor vehicle KCZ 279D.

With all the developments and improvements thereon were acquired and/or improved by the joint funds and efforts of the Applicant and the Respondent during the subsistence of their marriage and registered in the names of the Respondent to hold in trust for himself and the Applicant;

2. That an order do issue declaring the Respondent is accountable to the Applicant in respect of all the income derived from the said properties;
 3. An order directing that the Applicant retain and remain in possession of their matrimonial home situated in Land Parcel No. Kagaari/Kanja/5229 and title be transferred to her names and the Respondent be ordered to retain and be in possession of their matrimonial home situated in Land Parcel No. Kagaari/Kanja/4882;
 4. That the properties be settled to the benefit of the Applicant in such a manner and proportions as the honourable court deems just and fit;
 5. An order directing the Deputy Registrar of this Court to sign any documents that the Respondent may refuse to sign to effectuate the said transfer; and
 6. That the Respondent be condemned to pay costs of this suit.
2. The applicant stated in her supporting affidavit that in 1995, she got married to the respondent under Kiambu Customary Law and they have 3 children together. Their marriage was dissolved through divorce proceedings in the trial court, and a decree absolute was issued on 1st February 2024. It was her case that when she got married to the respondent, at first, they lived at the respondent's parent's home but later, they built another matrimonial home on parcel number Kaagari/Kanja/5229 and relocated there. Before and during their marriage, they were commercial tea farmers and they used the proceeds from the venture to expand their tea farming business through buying more properties.
 3. They also purchased a motor vehicle during their marriage. The money from their tea business was being kept in a joint KCB Bank account to which both parties were signatories and part of the money was used to pay for the children's education and to sustain their daily lives. They also established tea selling factories which are Mungania Tea Factory which houses 3 buying centers and Rukuriri Tea Factory which houses 5 buying centers which factories she was in charge of.
 4. She stated that the parties together built another home on parcel number Kaagari/Kanja/4882 which home was meant to be for the workers but after the divorce, the respondent moved into that house, where he still lives with his new wife. Following their separation, she was left to live on the house built on parcel number Kaagari/Kanja/5229 with the children.
 5. The respondent then blocked her access to the common bank account and withdrew all the money to another account which he solely controls. She stated that she has no means of survival and she cannot afford to pay fees for her daughter who is still in school without access to the joint funds. This is why she is asking for distribution of the matrimonial property. She produced documents in support of her case.

Replying Affidavit

6. The respondent stated that when he married the applicant in 1995, he was living on his father's land parcel number Kaagari/Kanja/1742 on which he had also planted 800 tea bushes. The income from the tea was between Kshs.16,000-Kshs.18,000/= annually. He stated that he bought land parcel number



- Kaagari/Kanja/5088 from Nyaga Kabuthi for Kshs.250,000/= in 1999 and that he did not use the proceeds of the tea farming because they were too low at the time.
7. That the money to buy the said land was from a butchery business he had at Mugui market. He stated that he later started a hardware business from whose proceeds he bought more land. According to him, he started differing with the applicant in 1999 when he purchased land parcel number Kaagari/Kanja/5088 when the applicant wanted to build a house for her mother. It was his averment that the applicant was always troublesome which led him to marry another wife in 2000.
 8. This new wife was supportive of his ventures and that it was because of her that he bought all the other properties that the applicant is claiming. He stated that the applicant is a housewife and she never contributed towards acquisition of the properties she is claiming. He voluntarily nominated the applicant as a signatory to his account at KCB bank but she, without his knowledge, withdrew Kshs.900,000/= from that account. He removed her as a signatory following this incident.
 9. The respondent stated that he has been continually overseeing his tea business and that the applicant has never run any tea farms. He denied that the applicant participated in building the house that stands on land parcel number Kaagari/Kanja/5229. He stated that it was that by a consent order, that he gave the applicant 5 acres of tea farm. He also gave some land with tea bushes to his 2 sons and kept 6 acres for himself and his new wife. He produced his bank statements to show that he has steady income throughout.

Summary of Evidence at the trial

10. The matter was heard *viva voce*.
11. AW1 was the applicant. She testified that the properties in question were acquired during her marriage to the respondent. Regarding the money she withdrew from the respondent's bank account, she stated that at the time, the respondent was sick and he authorized her to withdraw the money for his treatment. She alleged that he only married his other wife in 2022 after dissolution of their marriage. She stated that she wanted the property to be distributed in the manner stipulated in the OS.
12. On cross-examination, she stated that following dissolution of their marriage, the respondent moved into the house at Irangi, which they had built for the workers and it is made of timber and stone blocks. She couldn't recall when some of the properties were purchased. She was aware that under customary law, a man was allowed to have more than 1 wife.
13. She said that the properties were purchased using proceeds from tea farming and that it was the respondent who transacted at the point of purchase but she knew some of the land sellers. That they had a butchery business and that the respondent already showed his sons the land he owned. She urged the court to use its discretion in apportioning the properties.
14. RW1 was the respondent who testified that he did not use the proceeds from the tea farming to open the butchery. That he opened and ran many other businesses and she used the money to buy more properties. He denied that the applicant took care of the properties which he acquired with his own money. He stated that the applicant stole money from his account and ran off with it without cause. On cross-examination, he stated that he was ordered by the court to give 5 acres of land to the applicant and he gave her parcel numbers Kaagari/Kanja/5229, 5088 and 5110. That their matrimonial home is built on Kaagari/Kanja/5229 but he moved to Kaagari/Kanja/4882.
15. He stated that all the parcels of land named by the applicant have tea bushes on them. That the income from the tea farming was deposited into an account to which the applicant was a signatory and she had an ATM card with the authority of the respondent. The account indicated inflow of cash from KTDA



and no other sources. He stated that when he withdrew the money in 2022 from the account, he used it to pay debts and he bought his car in 2020 so that he could use it for his hospital visits.

16. He did not have evidence relating to income from his hardware business and he has a fuel kiosk at Mubui market but it is not claimed by the applicant. He stated that he bought the properties while he was living with his other wife and not the applicant. He withdrew all the money from the account because he feared that the applicant would empty the account.

Parties' Submissions

17. The parties filed their written submissions as directed by the Court.
18. The applicant submitted that the applicable law in this case is the *Matrimonial Property Act* no. 49 of 2013 which presumes that property acquired during subsistence of a marriage is matrimonial property. That her marriage to the respondent lasted between 1995 until 2022 when it was dissolved and the properties names in the OS were acquired during this period. The applicant submitted that she actively managed the properties which have tea bushes, and that this was her contribution. She tended the farms while the respondent was unwell and needed weekly medical care for diabetes management and dialysis.
19. She relied on section 2 of the *Matrimonial Property Act* where contribution of a spouse was defined as monetary and non-monetary. She stated that she bore and cared for the children and managed the family property which was acquired and registered in the name of the respondent. Further reliance was placed on the cases of *TKM v SMW* (2020) eKLR and *NWM v KNM* (2014) eKLR and she urged the court to consider this case based on its own unique facts. In her submission that under section 6(3) of the *Matrimonial Property Act* and Article 43(3) of *the Constitution*, she has a right to part of the properties since she contributed in their acquisition.
20. On his part, the respondent submitted that the applicant did not provide a conducive environment for him to thrive and acquire the properties which is why he married another wife who was more supportive. That the 5 acres of land with tea bushes on it was meant to enable the applicant raise money to pay school fees for their daughter. The decision to give that 5 acres to the applicant was by consent before the divorce court. He stated that the named properties are small, measuring about 1 acre each and that given the circumstances of the case, the applicant is only entitled to $\frac{1}{4}$ of the properties. He urged the court not to refer to the cases cited by the applicant because they are on monogamous families unlike the case herein.

Issue for Determination

21. Here, the only issue for determination is how the matrimonial property should be distributed.

Analysis

22. The parties herein were married from 1995 to 27th December 2023 when an order was made dissolving their marriage. Through the OS herein, the applicant seeks a part of the matrimonial property. First, it is important to define what constitutes matrimonial property. Section 14 of the *Matrimonial Property Act* provides:

“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.” [Emphasis added]
23. Matrimonial property is defined under section 6(1) of the *Matrimonial Property Act* as:
- “(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.”
24. Through their testimonies, it was evident that when the parties got married, they lived at the respondent’s father’s home where there was a house. The respondent stated that the land given by his father had 800 tea bushes which they monetized and raised some money to progress their new family. The applicant stated that she was a farmer at the point of marriage and so she participated actively in the crop husbandry which generated an income. That from this income, they bought more land.
25. They then moved to parcel number Kagaari/Kanja/5229 where they built a matrimonial home. The applicant stated that this land was purchased from the proceeds of tea farming which were being banked into a common bank account between them. The respondent contested this position stating that the proceeds from the tea business were too small to enable purchase of parcel number Kagaari/Kanja/5229 which he bought for Kshs.250,000/=. He stated that he opened other businesses which funded purchase of the other properties which have been named by the applicant in the OS.
26. The applicant said that the Parcel 5088 was purchased in 1999 during the subsistence of their marriage and it was registered in the name of the respondent as the head of the family. The respondent contested the applicant’s claim over the properties stating that she did not contribute in any way in their acquisition since she was a housewife. That the applicant never gave him peace of mind to enable him acquire the properties and that is why in 1999, he married another wife who gave him the support he needed.
27. There is no doubt that the customary law nature of the marriage in question rendered the respondent potentially polygamous. The applicant testified that the respondent married his second wife in 2022 to embitter her. Through his replying affidavit, the respondent also asserted that he married Sicily Njeri as his second wife in 2022. He, however, stated that he had been relating with her since the year 2000 and alleged that he had been staying with her for the last 22 years. This evidence settled the fact that by the time Sicily Njeri, the second wife, was being brought into the picture in 2022, the 1st wife remained the only spouse to the respondent.
28. With this in mind, even though the respondent was polygamous, section 8 of the *Matrimonial Property Act* does not apply because all the properties were acquired during his marriage to the applicant and before he married his second wife.
29. The named properties Kagaari/ Kanja/1905, Kagaari/ Kanja/7195, Kagaari/ Kanja/5229, Kagaari/ Kanja/ 3554, Kagaari/ Kanja/4447, Kagaari/ Kanja/6553, Kagaari/ Kanja/5110, Kagaari/ Kanja/7793, Kagaari/ Kanja/5088, and Gaturi/Nembure/4150 were registered in the name of the respondent in the years 1999, 2004, 2007, 2009, 2010, 2012, 2013, 2016 and 2017. The applicant



produced copies of the title documents for these properties. During all these years, the marriage between the parties was subsisting. Therefore, the properties are presumed to be matrimonial property in light of section 14 of the *Matrimonial Property Act*, unless such presumption is rebutted.

30. Both parties testified that the properties are developed with tea bushes which are commercialized and an income is drawn from them. The income used to go to a bank account which both parties could access until the respondent revoked the applicant's access. The respondent testified that the account was in his name and that he had initially authorized the applicant to be a signatory but he revoked the access in 2022 because she withdrew a large amount of money without his consent. The marriage subsisted until 2023 when it was dissolved. This means that the bank account also formed part of matrimonial property.
31. The parties testified that the respondent bought a motor vehicle in 2020 for use in going to hospital for his clinics. At this time, the marriage was still subsisting, therefore, the motor vehicle is also matrimonial property. As for the applicant's damage to the vehicle proved by the judgment in the criminal case, the amount assessed for its repair should be borne/paid by the applicant.
32. Regarding how the property should be distributed, the court is bound to consider the contribution of both parties to the acquisition of the matrimonial property. Unless there exists a pre-nuptial agreement, section 7 of the *Matrimonial Property Act* provides that matrimonial property should be divided according to each party's contribution. It states:
- “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.”
33. Under section 2 of the *Matrimonial Property Act*:
- ““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;” [Emphasis added]
34. The applicant's contribution to the acquisition of the properties has been deeply contested by the respondent who stated that the applicant never participated in running the affairs of the tea farms. The applicant stated that she actively participated in harvesting the tea with the workers and running the tea farms and delivering the tea to buying centers. She stated that since 1999, the respondent was sick and was in hospital every week over complications relating to hypertension and diabetes.
35. The respondent produced his bank statements from 2009 showing consistent inflow of cash from KTDA as proceeds from the tea farms. He also testified that all the payments he received were from KTDA directly. It is to this very account that applicant's access was revoked. Given that the respondent has not disputed being ill, I accept on a balance of probabilities, that the applicant actively contributed to tending the tea farms which produced a consistent income. Therefore, it is prudent to say that the applicant contributed to the land through farm work and managing the family home.



36. Both parties testified that the applicant lived with their 3 children, 2 of whom are adults and one is still pursuing her education. The respondent stated after they started disagreeing, he left the matrimonial home and moved to one of the other properties and that is when he married his 2nd wife. The applicant remained in the matrimonial home maintaining it and caring for the youngest daughter who still lives at home.
37. In as much as the respondent denies the applicant's contribution and insinuates that she was a pain during acquisition of the matrimonial property, it is clear that in terms of Section 2 of the MPA, she still played a key role in "contributing" to domestic work, and management of the matrimonial home and property, child care and farm work. The Applicant's OS is grounded upon Article 45(3) of *the Constitution* which provides:
- "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."
38. The Supreme Court of Kenya discussed this provision of *the constitution* in light of the question of contribution of spouses to matrimonial property in the case of *JOO v MBO; Federation of Women Lawyers (FIDA Kenya) & another (Amicus Curiae)* [2023] KESC 4 (KLR), where it was held:
- "Equality of parties to a marriage had largely been interpreted and construed in two ways. On the one hand, an interpretation of article 45(3) of *the Constitution* had been construed to mean a division of matrimonial property down the middle through the literal application of the 50:50 division ratio. Proponents of that argument largely opined that since non-monetary contribution could not be quantified but was equally important, a split right in the middle would be more appropriate. The second approach was that 'equal' as provided for under article 45(3), meant that a party obtained an equivalent of what one contributed, monetarily or otherwise.
- Article 45(3) of *the Constitution* underscored the concept of equality as one that ensured that there was equality and fairness for both spouses. Equality and fairness were therefore one and intertwined. Equality also underscored the concept that all parties should have the same rights at the dissolution of a marriage based on their contribution, each party's contribution to the acquisition of matrimonial property could not have been done on an equal basis as a party could have significantly contributed more in acquiring property financially as opposed to the other party.
- Equity denoted that the other party, though having not contributed more resources to acquiring the property, could have nonetheless, in one way or another, through their actions or deeds, provided an environment that enabled the other party to have more resources to acquire the property. That was what amounted to an indirect contribution. Equity therefore advocated for such a party who could seem disadvantaged for failing to have the means to prove direct financial contribution not to be stopped from getting a share of the matrimonial property." [Emphasis added]
39. It is trite that every case must be tried based on its unique set of facts (see *Francis Njoroge v Virginia Wanjiku Njoroge*, Nairobi Civil Appeal No. 179 of 2009). In the present case, the applicant leans on



the argument that she provided non-monetary contribution. This has been found to be the case. In the case of *PWK v JKG* [2015] eKLR (supra) the court said:

“Where the disputed property is not so registered in the joint names of the spouses but is registered in the name of one spouse, the beneficial share of each spouse would ultimately depend on their proven respective proportion of financial contribution either direct or indirect towards the acquisition of the property. However, in cases where each spouse has made a substantial but unascertainable contribution, it may be equitable to apply the maxim equality in equity while needing the caution of Lord Pearson in *Gissing v Gissing* [1970] 2 ALL ER. 780 Pg 788.” [Emphasis added]

40.

Matrimonial Home

The applicant seeks to retain full sole possession and ownership of Parcel No.5229 whilst the respondent should be given sole ownership and possession of Parcel No.Kagaari/Kanja 4228. The evidence is to the effect that the applicant presently lives on Parcel No.5229 and the respondent lives on Parcel No.4228. It is not disputed that the Matrimonial home was Parcel No.5229.

41. “Matrimonial home” is defined in Section 2 of the MPA to mean:

“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”

42. None of the evidence availed by the parties shows that Parcel No.4228 is a matrimonial home, and that it is, or was, occupied or used by the spouses as their family home. That property was occupied by only the respondent when he fell out with the applicant. He brought his new wife to it. I therefore cannot treat that property specifically as a matrimonial home.

43. The parties are agreed that the house in Parcel 4228 is half stone and half-timber; a semi-permanent house originally built for their workers. It is not disputed that the house occupied by the applicant is a permanent house containing four rooms; and that this house was their matrimonial home.

Disposition

44. In light of all the foregoing, the originating summons succeeds on the following terms:

1. A declaration is hereby made that the properties known as:

- a. Kagaari/ Kanja/1905,
- b. Kagaari/ Kanja/7195,
- c. Kagaari/ Kanja/5229,
- d. Kagaari/ Kanja/ 3554,
- e. Kagaari/ Kanja/4447,
- f. Kagaari/ Kanja/6553,
- g. Kagaari/ Kanja/5110,
- h. Kagaari/ Kanja/7793,
- i. Kagaari/ Kanja/5088,



- j. Gaturi/Nembure/4150,
- k. KCB Bank Account No. 13****478 and
- l. Motor vehicle KCZ 279D;

With all the developments and improvements thereon were acquired and developed by the funds and efforts of the Applicant and the Respondent during the subsistence of their marriage and registered in the names of the Respondent to hold in trust for himself and the Applicant;

- 2. A declaration is hereby made that the applicant is entitled to 50% of all the income derived from all immovable property in 1 (a) – (j) above; including Kagaari/Kanja/4882 which is not listed.
- 3. The property known as Kagaari/Kanja/5229 is hereby declared to be the matrimonial home. The said property shall be professionally valued and the applicant shall retain it upon paying over half the value thereof to the respondent. This shall be effected within Thirty (30) days of this Judgment.
- 4. The tea income deposited into KCB Bank Account No.13****478 from the date of dissolution of the marriage to until the date of this judgment shall be deemed to belong jointly to the two parties.
- 5. In every case, the immovable property shall be distributed to the Applicant and Respondent in the ratio of 50:50 per cent respectively being their contributions for the purchase and development of the said property;
- 6. Subject to order (2), any party shall be at liberty to purchase the other party's share of contribution of the properties referred to.
- 7. Motor vehicle KCZ 279D shall be distributed to the Applicant and Respondent on a ratio of 50:50 per cent respectively and the Applicant be at liberty to purchase the Respondents share of contribution and vice versa; With regard to the damage done to the said vehicle by the applicant, the assessed value for its repair shall be borne by the applicant.
- 8. In light of the orders hereinabove, the Deputy Registrar of this Court shall sign any documents that any party may refuse to sign to effectuate or to fulfill the transfer orders herein, if such documents are not signed within 60 days of this judgement; and
- 9. Each party to bear his/ her costs of the suit.
 - 1. Orders accordingly.

DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 30TH DAY OF JULY, 2025.

R. MWONGO

JUDGE

Delivered in the presence of:

Ms. Mutegi for Applicant

Ms. Njagi holding brief for Kathungu for Respondent

Francis Munyao - Court Assistant

