



REPUBLIC OF KENYA



KENYA LAW
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**GCR v COO (Matrimonial Cause E003 of 2021)
[2025] KEHC 11953 (KLR) (15 August 2025) (Judgment)**

Neutral citation: [2025] KEHC 11953 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MATRIMONIAL CAUSE E003 OF 2021
RN NYAKUNDI, J
AUGUST 15, 2025**

BETWEEN

GCR APPLICANT

AND

COO RESPONDENT

JUDGMENT

1. The applicant vide originating summons dated 4th November, 2021 expressed under the provisions of Articles 19, 20, 21, 22, 23, 24, 27, 40, 45(3), 48, 50(1) and 159 of *the Constitution*, Order 37 (r 11) of the Civil Procedure Rules and sections 6, 12, 14, XX of the *Matrimonial Property Act* 2013. The applicant seeks orders as follows:
 - a. A declaration that a parcel of land known as Plot XX Munyaka Phase II and the developments thereon is a matrimonial property in favour of the applicant and the Respondent.
 - b. A declaration that the applicant is entitled to a fifty percent (50%) share in the land parcel known as Plot XX Munyaka Phase II and the developments thereon.
 - c. The Respondent is restrained from selling, transferring, leasing out, charging or in any other way interfering with the ownership, possession, occupation and use of a parcel of land known as Plot XX Munyaka Phase II and the developments thereon pending conclusion of the divorce between the parties herein and subsequent division of the property.
 - d. Costs of the suit are awarded to the applicant.
2. The application is anchored on grounds that:
 - a. The Applicant and the Respondent herein got into a love relationship in the year 2014 and started cohabiting together.



- b. The Respondent had just purchased a parcel of land known as Plot XX Munyaka Phase II and started constructing a house at the time the parties herein met.
- c. The parties herein agreed to develop the land jointly in view of their intention to enter into a marriage.
- d. The Parties herein entered into an Agreement on 1st November, 2014 to concretize their intention to jointly develop the property and the Applicant herein made a cumulative contribution of KES. 1,042,000 towards the improvement of the property.
- e. The parties herein entered into a marriage which was celebrated on 24th January, 2017 and started to formally live as husband and wife and the above-mentioned property was used as a matrimonial home.
- f. The Applicant herein subsequent to the marriage made further direct financial contribution of a sum of KES. 1,011,203 towards improvement of the property as follows;
 - i. Electrical installation at the Gazebo and Store;
 - ii. House Repairs;
 - iii. Plumbing and Drainage;
 - iv. Steps to Outside Washrooms;
 - v. Re-levelling of the compound;
 - vi. Partitioning;
 - vii. Perimeter Wall; and
 - viii. Clothes line.
- g. The Applicant equally made indirect contributions towards the development and improvement of the suit property herein which should be assigned as part of her contribution to the value of the property and compensated as such.
- h. The union between the parties herein was blessed with one issue, baby CO, who was born on 8th October, 2016.
- i. The parties herein got into financial distress in the year 2019 and they decided to rent out the above-mentioned property and moved to a cheaper rented house allowing them a surplus from the rental income.
- j. The marriage between the parties herein hit a rock in the year 2019 and they subsequently separated.
- k. The parties are currently going through the motions of divorce.
- l. The parties herein agreed to have the Applicant continue to receive the rental income from the property and the same to be applied towards the upkeep of the minor issue of the marriage.
- m. The Respondent has recently started to interfere with the tenant in the premises.
- n. There is an imminent risk that the Respondent herein will interfere with the ownership, possession, occupation and use of the suit property before the conclusion of the divorce and subsequent division of the property.



- o. There is an imminent risk that the Applicant herein will lose out on her share of the suit property unless protected by this Honourable vide the orders sought herein.
3. I have gone through the record and I take note of the fact that the Respondent was served with the suit papers in multiple occasions but never entered appearance. I shall nonetheless proceed and consider the application on merit.

Analysis & Determination

4. Having carefully considered the originating summons, the issues that arise for determination are as to whether the property in question qualifies to be a matrimonial property and whether each party is then entitled to a 50-50 share.
5. The Applicant has brought this suit under the *Matrimonial Property Act*, seeking division of what she terms ‘matrimonial property’

“Section 6 (1) of the *Matrimonial Property Act* 2013, defines

‘Matrimonial Property’ in the following terms; -

“6 For the purpose of this Act, Matrimonial property means

(1)

- a. The matrimonial home or homes.
- b. Household goods and effects in the matrimonial home or homes.
- c. Any other immovable and movable property jointly owned / and acquired during the Subsistence of the marriage.”

6. The key issue that must be addressed is establishing the precise timeframe during which the parties were legally married. This determination is essential because it will govern whether the property in question was actually obtained while the marriage was legally valid and subsisting.

7. In the case of *J.M.V v F.M.C* [2018] eKLR the court stated as follows: -

“.....for a 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 the matrimonial property.....”

8. From the evidence presented, it is established that the parties herein commenced cohabitation in 2014, during which period they developed a romantic relationship. The respondent had already purchased Plot XX Munyaka Phase II prior to meeting the applicant and had commenced construction activities on the property. The parties subsequently formalized their relationship through marriage on 24th January, 2017, as evidenced by the marriage certificate presented before this court.

9. The critical question therefore becomes: what portions of the property development occurred during the legal subsistence of the marriage versus what occurred during the pre-marital cohabitation period? This distinction is fundamental in determining the extent to which the property qualifies as matrimonial property under the Act.

10. From the applicant's own pleadings, it is evident that she made substantial contributions totalling KES. 1,042,000 towards property development during the pre-marital period between 2014 and January 2017. These contributions were made pursuant to an agreement dated 1st November, 2014, which preceded the formal marriage by over two years. While these contributions demonstrate the



applicant's commitment to the relationship and the property development, they cannot be classified as contributions made "during the subsistence of the marriage" as required under Section 6(1)(c) of the *Matrimonial Property Act*.

11. However, the evidence also establishes that the applicant made additional direct financial contributions amounting to KES. 1,011,203 after the marriage was solemnized in January 2017. These post-marriage contributions included electrical installations, house repairs, plumbing and drainage works, construction of steps to outside washrooms, compound re-leveling, partitioning, perimeter wall construction, and installation of a clothes line. These contributions were undoubtedly made during the subsistence of the marriage and therefore qualify for consideration under the *Matrimonial Property Act*.
12. This court must also consider the applicant's indirect contributions during the marriage, including her role in maintaining the matrimonial home, caring for their child CO (born 8th October, 2016), and managing the property when it was subsequently rented out for income generation. These non-monetary contributions are equally significant and must be factored into any equitable distribution of the matrimonial property.
13. The Court of Appeal in PNN v. ZWN (Civil Appeal No. 128 of 2014) spoke on the question of division of matrimonial assets in Kenya. Justice Kiage J.A observed that it would be surreal to suppose that *the Constitution* somehow converts the state of coverture into some sort of Laissez-passer, a passport to fifty percent wealth regardless of what one does in that marriage. He noted further as follows:

“Industry, economy, effort, frugality, investment and all those principles that lead spouses to work together to improve the family fortunes stand in peril of abandonment were we to say *the Constitution* gives automatic half-share to a spouse whether or not he or she earns it. I do not think that getting married gives a spouse a free to cash cheque bearing the words “50 per cent.

Thus it is that *the Constitution*, thankfully, does not say equal rights “including half of the property.” And it is no accident that when Parliament enacted the *Matrimonial Property Act*, 2013, it knew better than to simply declare that property shall be shared on a 50:50 basis. Rather, if set out in elaborate manner the principle that division of matrimonial property between spouses shall be based on their respective contribution to acquisition.”

14. Article 45(3) of *the Constitution* of Kenya 2010 provides that:

“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”

15. This issue of how matrimonial properties should be divided was conclusively settled by the Supreme Court of Kenya in the case of Joseph Ombogi Ogentoto v Martha Bosibori Ogentoto Petition No. 11 of 2020 where it was held as follows:

“...we also find that Article 45(3) acts as a means of providing for equality as at the time of dissolution of marriage but such equality can only mean that each party is entitled to their fair share of matrimonial property and no more. Nowhere in *the Constitution* do we find any suggestion that a marriage between parties automatically results in common ownership or co-ownership of property (hence vesting of property rights) and Article 45(3) was not



designed of the purpose of enabling this court to pass property rights from one spouse to another by fact of marriage only.....

our view is that, while Article 45(3) deals with equality of the fundamental rights of spouses during and after dissolution of marriage, we must reiterate that equality does not mean the re-distribution of proprietary rights at the dissolution of a marriage. Neither does our reading of this provision lead to the assumption that spouses are automatically entitled to a 50% share by fact of being married.....

it is our finding that the stated quality 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 Tuiyot, 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.”

16. Applying the principles established in *Joseph Ombogi Ogentoto v Martha Bosibori Ogentoto*, this court must ensure a fair and equitable division based on respective contributions rather than an automatic 50-50 split. The court notes that while the respondent initially acquired the property and made the foundational investment, the applicant made substantial financial and non-financial contributions that enhanced the property's value during the marriage.
17. Given that the property served as the matrimonial home from January 2017 until the parties' separation in 2019, and considering the applicant's documented contributions totaling over KES. 1,011,203 during the marriage period, plus her indirect contributions in maintaining the home and caring for their child, this court finds that she is entitled to a fair share of the property's enhanced value attributable to contributions made during the marriage.
18. However, the court cannot ignore that the respondent's initial investment and pre-marital development work forms the foundation upon which subsequent improvements were built. A purely mathematical approach based solely on monetary contributions would not achieve the equitable outcome envisioned by *the Constitution* and the *Matrimonial Property Act*.
19. As a result, the following orders do abide:
 - a. A declaration is hereby issued that Plot XX Munyaka Phase II and the developments thereon constitutes matrimonial property to the extent of improvements and enhancements made during the subsistence of the marriage between January 2017 and 2019.
 - b. It is declared that the applicant is entitled to a fifty percent (50%) share in Plot XX Munyaka Phase II and the developments thereon, which share reflects her direct and indirect contributions during the marriage period, balanced against the respondent's foundational investment and pre-marital contributions.



- c. It is ordered that the respondent is hereby restrained from selling, transferring, leasing out, charging, or in any other way interfering with the ownership, possession, occupation, and use of Plot XX Munyaka Phase II and the developments thereon pending the finalization of arrangements for the applicant's share or alternative compensation.
- d. It is further ordered that the parties may, within sixty (60) days of this judgment, explore amicable arrangements for either:
 - i. Physical partition of the property, or
 - ii. Buy-out arrangements whereby one party compensates the other for their determined share, or
 - iii. Sale of the property and distribution of proceeds according to the shares determined herein.
- e. I make no orders as to costs.

20. Orders accordingly.

DATED, SIGNED AND DELIVERED VIA CTS AT ELDORET THIS 15TH DAY OF AUGUST 2025

.....

R. NYAKUNDI

JUDGE

