



**LMN alias LMS v VSM (Divorce Cause 1 of 2015)
[2023] KEHC 22352 (KLR) (22 September 2023) (Judgment)**

Neutral citation: [2023] KEHC 22352 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
DIVORCE CAUSE 1 OF 2015
RM MWONGO, J
SEPTEMBER 22, 2023**

BETWEEN

LMN ALIAS LMS PETITIONER

AND

VSM RESPONDENT

JUDGMENT

1. The Petitioner and Respondent were married under customary law in January 1988. Their marriage was solemnised at [particulars withheld] Church under the Marriage Act on 14th March 1999, and a certificate of marriage was issued.
2. The marriage was blessed with (3) issues of marriage namely: DMS -born on 28.11.1988 now aged 27 years and a University graduate; CNS -born on 13.9.1991 aged 24 years and in business; and MNS born on 9.6.1993 now a 4th year student at Daystar University.
3. Their relationship increasingly deteriorated and they could not endure cohabitation. From the pleadings the petitioner says that during the subsistence of the marriage the respondent has treated her with cruelty; That the respondent has expressly and constructively deserted the matrimonial home and only sneaks in occasionally to cause havoc to the petitioner and her children; and that such acts have made it impossible for the petitioner to ever claim her conjugal rights for a period of 5 years.
4. Following a ruling of this court in 2015, the couple obtained judicial separation.
5. By an Amended Petition dated 20.3.2018 the petitioner sought the following orders:
 - i. A declaration that the marriage between the Petitioner and the Respondent has irretrievably broken down and same be dissolved.
 - ii. The Respondent do pay the costs of the Petition.



- iii. Any other relief this Honourable court may deem just to grant.
 - iv. An order for sub-division and sharing out of the listed matrimonial properties equitably and in accordance with the relevant laws.
6. The Petitioner asserts that during the subsistence of the marriage between the couple, they jointly acquired matrimonial properties in respect of which she prays for an order of subdivision and equitable sharing in accordance with each party's level of contribution. The properties are as follows:
1. Plot No. XXX Wang'uru Township where the matrimonial home is constructed.
 2. Plot No. XXXX Wang'uru Township duly developed by the petitioner.
7. The respondent filed an amended answer to the petition dated 28th March, 2018. He seeks that the petition be dismissed with costs; but in the event it is allowed, he prays that the properties listed below be shared out between them:
- a. Plot number XXXX Lock Up Wanguru.
 - b. Plot number XXXX Wanguru.
 - c. LR Mwea/Tebere/B/XXXX
 - d. Business run as [particulars withheld] Stores & [particulars withheld] Pakistan.
 - e. Motor vehicle registration number KBH XXXX Toyota Ipsum
 - f. LR Mwea/Tebere/B/XXXX which the Petitioner sold to JoKN.
 - g. LR Mwea/Tebere/B/XXXX which the Petitioner charged to Family Bank Ltd without consent of the Respondent.
8. A hearing was held at which both parties testified, and the petitioner called one witness.

Petitioner's Submissions

9. As to whether the marriage has irretrievably broken down and hence capable to be dissolved and or annulled, the Petitioner submitted as follows: That there is sufficient evidence that the Respondent was very cruel to the Petitioner herein and he used to brutalize her to an extent that he had hidden a Somali Sword under the mattress with an intention of butchering her, but fortunately she discovered it and managed to escape. That the Petitioner had invited their 'god parents' together with her own father with a view of reconciling the couple but the Respondent became adamant and nearly assaulted his own father in-law using the old man's walking stick; That such act is very disrespectful in an African culture; That all efforts to reconcile the parties herein has failed to date; That it is clear that in his evidence the Respondent testified that he is not interested in the marriage relationship which he doesn't mind being dissolved.
10. Further, that the Petition for divorce should be allowed since it is also against public policy to force two unwilling adults to cohabit which may lead to a catastrophe with dire consequences.
11. As to the matrimonial properties, the petitioner submits that the Respondent has not produced sufficient admissible evidence to prove the existence of businesses like the [particulars withheld] Rice Stores and [particulars withheld] Pakistan; or evidence of existence of matatu business which operated under " [particulars withheld] Sacco Ltd". He testified that the matatu business collapsed after he was



transferred to Mombasa County and was unable to operate the matatu business hence he sold the motor vehicles out.

12. The petitioner further submitted that during the respondent's evidence, he admitted that upon his retirement as a Police Officer, he secured a gratuity of Kshs 2,000,000/-; that he also receives payments of Kshs. 30,000/= per month from the Police Service and that, he should account for this gratuity which consists of matrimonial property capable to be shared out between the parties herein on a 50:50 basis.
13. The petitioner submitted with regard to each of the listed properties as follows:

Plot Plot No. XXXX Wang'uru Township and Plot No. XXXX Wang'uru Township

14. As to Plot No. XXXX Wang'uru Township where the matrimonial home is constructed, and Plot No. XXXXX Wang'uru Township duly developed by the petitioner, these were admitted as matrimonial properties. Thus they are available for distribution.

Plot No. XXXX Wang'uru Market

15. This plot is registered in the joint names of the Petitioner and the Respondent. A sale agreement dated 3.3.2006 in the Respondent's list of documents shows that same was bought jointly by the parties. However, this Plot has a loan from Family Bank Limited of about Kshs. 18,000,000/=. The petitioner submits that upon clearance of the loan by year 2015 the property should be valued and shared out between the parties equally.

Plot No. B XXXX Wang'uru Market

16. This Plot is registered in the names of the Petitioner alone and there is evidence that she bought the same vide a sale agreement dated 12.5.2008 for Kshs. 1,600,000/= which is listed as item 18 in the Respondent's list of documents. the petitioner submits that the Respondent has not demonstrated any form of contribution therein whether monetary or non-monetary as required under Section 2 of the *Matrimonial Property Act* 2013 . The petitioner submits that this property is not available for distribution in favour of the Respondent herein.

LR Mwea/Tebere/B/XXXX

17. The Respondent alleges that this Plot belonged to the Petitioner but was sold out to Josphat Kamau Nguire. He has produced a copy of the Green Card from the Lands Office showing that the Petitioner bought the same on 10.11.2010 for Kshs. 100,000/= and sold it out on 25.11.2014 and since the Plot is in the names of a 3rd party, the same is not available for distribution. In any event, the Respondent has not alleged or given any evidence to indicate that, he made any monetary contributions towards its acquisition at all.

LR Mwea/Tebere/B/XXXX

18. The Plot herein is registered in the names of the Petitioner and is charged with Family Bank Limited to secure the sum of Kshs. 1,300,000/=. The petitioner submits that the Respondent has not furnished any evidence as to his contributions towards the acquisition of the same by the Petitioner. In absence of such admissible evidence, it is submitted that it is not available for distribution in view of Section 6 and 14 of the *Matrimonial Properties Act*, and this claim should be dismissed.



Plot No. XXXX A Wang'uru Township

19. The above Plot is registered in the names of the Petitioner. It is clear from the Minutes extract WTPM&H219/2012 that it was a sub-division from Plot No. XXX Wang'uru registered between Petitioner and others. There is no allegation or evidence furnished that the Respondent contributed in any way towards its acquisition. As such, the petitioner submits that no legal claim can be made to this Plot which is not available for distribution in favour of the Respondent pursuant to Section 7 of the [Matrimonial Properties Act](#).

Plot No. XXXX Wang'uru Market

20. This Plot is registered in the names of the Respondent and is the parties have their matrimonial home. it was submitted that the Plot should be valued, sold and the proceeds shared equally amongst the parties herein.

Other properties

21. According to the petitioner, the Respondent in his testimony in court had alleged that there is other properties constituting matrimonial properties namely Plot No. LR Mwea/Tebere/B/XXXX, a Mill called "[particulars withheld]" and a Prado car. However, no documentary evidence was availed to prove that such properties exist and whether they are registered in the names of the Petitioner, when they were acquired, and the levels of contribution of the parties.
22. It was submitted that, in view of the lack of evidence in terms of Section 107 of the [Evidence Act](#) Cap 80 Laws of Kenya, the assertions on other properties statements are not admissible and cannot matrimonial properties.
23. The petitioner submitted that Article 45 of the [Constitution](#) of Kenya 2010 is very clear that, the parties to a marriage has specific rights to matrimonial properties before, during the subsistence of the marriage and even after the dissolution of the same. That it was trite law that such entitlement is not on 50:50 ratio basis but in accordance with the parties capacity and level of contribution.
24. Finally, the Petitioner relied on the following authorities: Malindi High court Matrimonial case No. 16 of 2014: [FS v F.Z](#) in which Chitembwe J considered the issue of monetary/financial contribution and non-monetary contributions and proceed to share out matrimonial properties therein. Further reliance was placed on the case of Nairobi H.C Matrimonial Property Cause No. 49 of 2019 [AWM v JGK](#), where Mutuku, J, considered the relevant provisions of the law and legal principles governing the distribution of matrimonial properties.

Respondent's submissions

25. On the breakdown of the marriage, the respondent pointed out that the lack of trust was clearly exhibited in the filing of the application by the Petitioner dated 12th March 2015 which resulted in the judicial separation ruling of this court dated 27th October, 2015. As a result the parties have been living separately for the last 7years, and there is no likelihood of their reconciliation. It would thus be prudent for the marriage solemnized between them at [particulars withheld] Church Wang'uru on 14/3/1999 to be dissolved due to their irreconcilable differences.
26. As to division of the matrimonial property, the respondent submitted as follows: That Section 6 of the [Matrimonial Property Act](#) 2013 defines matrimonial property to include:
- a). The matrimonial home or homes.



- b). Household goods and effects in the matrimonial home or homes or
- c). Any other immovable and moveable property jointly owned and acquired during the subsistence of the marriage”.

27. It is the Respondents case that when the parties married in 1988 the Petitioner was a house wife and the Respondent was a police officer. This state of affairs is reflected in the certified copy of the certificate of marriage attached to the amended petition dated 20th March 2018. It was also the Respondent’s case that he is the one who established the rice buying business for his wife and which she ran and managed as a family business.
28. It was further the evidence of the Respondent that from time to time he injected capital into the businesses through loans obtained from banks and Saccos. As proof thereof he produced his pay slips as Respondent’s exhibits 2,3,5,15 and 19 which reflect the said loans.
29. It is also the Respondent’s case that other than the rice business, he also bought motor vehicles which he registered in his wife’s names. These motor vehicles were operated under [particulars withheld] Sacco and [particulars withheld] Sacco. The respondent asserts that that all the properties mentioned in paragraph 7 of the amended answer dated 28 March 2018 were acquired from the proceeds of the family businesses managed by the Petitioner and should be shared equally between the 2 parties.
30. According to the respondent, all the rents accruing from their properties were to be deposited into a joint account operated by both counsels. No joint account was ever opened, and the Petitioner has not accounted for any income from those businesses, which she has been running alone. She was also restrained from disposing motor vehicle registration number KBH XXXX but she nevertheless sold it off.
31. In his testimony, the Respondent stated that from the proceeds of the businesses the petitioner set up a rice mill under the name and style of [particulars withheld Rice Millers and also bought a motor vehicle registration number KCK XXXX Toyota Prado which he sought to be declared matrimonial properties.
32. The respondent submits that this court should share the matrimonial properties set out in paragraph 7 of the Respondent’s amended answer on a 50:50 basis. These are Plot B XXXX Lock Up, Plot no. XXXX Wang’uru, LR Mwea/Tebere/B/3941, LR Mwea/Tebere/B/XXXX and motor vehicle KBH XXXX Toyota Ipsum. These would be in addition to Plot Nos. XXXX and XXXX which are registered in their joint names. According to the respondent, this is because the Petitioner did not adduce evidence of any source of income other than the family business which were started with capital provided by the Respondent.
33. As to the applicable law, the respondent submitted that Article 45 (1) of the *Constitution* declares 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”.
34. The respondent cited the following authorities: Court of Appeal Civil Appeal No. 559 of 2019 Nairobi between *Edward Nganga Kairu v Mary Njoki Ndiba Nganga* where the Court dealt with the interpretation of Article 45(3) of the *Constitution* and the *Matrimonial Property Act* 2013 when sharing matrimonial property between the parties.



35. The respondent also cited *PWK v JKG* (2015) eKLR where the court had ordered distribution of matrimonial property at the ratio of 50:50. In that case most of the contested properties had been acquired with income generated from family business

Issues for Determination

36. The following arise for determination:
1. Whether the marriage between the Petitioner and the Respondent has irretrievably broken down and hence capable to be dissolved and or annulled.
 2. Whether the property herein amounts to matrimonial property.

Analysis and Determination

Whether the marriage has irretrievably broken down and hence capable to be dissolved and or annulled.

37. It is not in dispute that the parties were married in January 1988 under Kikuyu Customary law and proceeded to solemnize their marriage at [particulars withheld] Church on 14.3.1999. It is also not in dispute that they separated in 2015 due to the breakdown of their relationship, and that they have not cohabited since then.
38. According to the petitioner the marriage has irretrievably broken down. She asserts that during the subsistence of the marriage the respondent treated her with cruelty; that he has expressly and constructively deserted the matrimonial home and only sneaks in once in a while, which causes havoc to the petitioner and her children, an act which has made it impossible for the petitioner to claim her conjugal rights for a period of 5 years.
39. Whilst the petitioner prays that the divorce be granted on the grounds of cruelty and constructive desertion, the respondent's submission is that there is no likelihood of the parties reconciling. Accordingly, that it would be prudent if the marriage solemnized between them on 14/3/1999 is dissolved due to their irreconcilable differences.
40. The grounds for dissolution of a civil marriage are as set out in Section 65 of the *Marriage Act* which provides that:
- “A party to a marriage celebrated under Part IV may only petition the court for the separation of the parties or the dissolution of the marriage on the following grounds—
- (a) adultery by the other spouse;
 - (b) cruelty by the other spouse;
 - (c) exceptional depravity by the other spouse;
 - (d) desertion by the other spouse for at least three years; or
 - (e) the irretrievable breakdown of the marriage.
41. The evidence of PW2, MWM, was that she came to know the petitioner in 1997. In oral testimony she said and her husband were the best couple of the petitioner and respondent from 2009, although they became family friends in 2007. She testified that the parties' problems began in about the year 2000.



42. According to PW2, the respondent had come to their house at night, naked and having been beaten. This was in 2000. She and her husband went to the couple's house where they discussed issues. The respondent said he had beaten the petitioner due to her keeping a dirty bathroom. Following their discussion, the parties reconciled. However, from around that time, they did not live peacefully. There was further testimony that the beatings continued from time to time, and the petitioner and respondent eventually had to separate.
43. The years that are specifically repeated by both the petitioner and PW2 in their evidence as being the years of serious distress between the couple are the years 2008 onwards. Little is said about the years before 2008 other than the incidents in 2000 and 2001.
44. On cruelty, G. B. M. Kariuki, J (as he then was) in *W.M. M v B.M.L* [2012] eKLR stated that:
- “Courts have avoided formulation of an exhaustive definition of cruelty. Acts of cruelty, like acts of negligence in the law of torts, are said to be infinitely variable.”
45. In this case I would say that the violence meted on the petitioner can only be described as constituting cruelty. I so find.
46. As to the state of the couples' relationship, all the evidence on record, including the parties' own testimony and assessments indicates that the marriage has irretrievably broken down; that there is deep distrust between the couple; and that there have been many attempts to help reconcile the parties including visiting with parents and interventions by the best couple; that since separation there has been no intimacy.
47. In the case of *K A S v M M K* [2016] eKLR Chitembwe J stated:
- “It is clear from the pleadings that none of the parties is interested in a conciliatory process. There is also a not so subtle dislike the parties have displayed for each other which appears to be deep seated. Furthermore, it is in the open that they do not trust the fidelity of each other and went on to discredit each other. In addition, it is obvious that whatever love and attraction they had for each other has been swept away by the winds of distrust demonstrated by the accusations they have levelled against each other. There is before the court a marriage by name and paper alone, a shell of its former self that has lost hope of being salvaged. It is nothing but a sham. In my view then, their differences are irreconcilable and the marriage has irretrievably broken down. Each party wants to head to the opposite direction with the intention of not ever meeting again. An order of dissolution of marriage ought to be granted.”
48. Similar words could well be used to describe the relationship between the parties herein. In my view, there is sufficient evidence to conclude that the marriage has irretrievably broken down. Accordingly, I would grant the couple an order of dissolution of the marriage. I hereby do so.

Matrimonial Property

49. Section 6 of the *Matrimonial Property Act* that 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.



50. For property to qualify as matrimonial property, it must meet the definition in Section 6 quoted above. From the evidence available in court, it is clear to me that the Applicant and the Respondent got married under customary law in 1988 and solemnized their union in church on 14th March, 1999. This brings their dispute within the framework of the *Matrimonial Property Act*, 2013.
51. It is asserted by the petitioner that during the subsistence of the marriage the parties were able to jointly acquire the following properties as matrimonial properties and should be shared between the two parties:
1. Plot No. XXXX Wang'uru Township where the matrimonial home is constructed.
 2. Plot No. XXXX Wang'uru Township allocated in both parties names.
52. The respondent filed an amended answer to the petition dated 28th March, 2018. He prayed for the petition to be dismissed with costs but in the event it is allowed the properties tabulated in paragraph 7 of the answer to the petition be shared out between them. The properties are as follows:
- a. Plot No XXXX Lock Up Wanguru shown in Minute No WTPM&H 90/2008 in petitioners name
 - b. Plot No XXXX Wanguru shown in Min No WTPM&H 219/2012 for subdivision in Petitioner's name
 - c. LR No Mwea/Tebere/B/XXXX
 - d. Business run as [particulars withheld] Stores & [particulars withheld] Pakistan.
 - e. Motor vehicle registration number KBH XXXX Toyota Ipsum
 - f. LR No Mwea/Tebere/B/XXXX which the Petitioner sold to JKN.
 - g. LR Mwea/Tebere/B/XXXX which the Petitioner charged to Family Bank Ltd without consent of the Respondent.
53. The respondent submits that the above properties were acquired from the proceeds of the family businesses managed by the petitioner and should be shared equally between the two parties.
54. With regard to [particulars withheld] Rice Stores and [particulars withheld] Pakistan businesses and also the matatu business which operated under "[particulars withheld] Sacco Ltd, the petitioner submitted that the Respondent had not produced sufficient and admissible evidence to prove the existence of the same. Businesses like the and to which he testified that, the matatu business collapsed after he was transferred to Mombasa County since the Petitioner could not operate a matatu business hence he sold the motor vehicles out.
55. On his part, the Respondent's case is that when the parties married in 1988 the Petitioner was a house wife and the Respondent was a police officer. This state of affairs is reflected in certified copy of the certificate of marriage attached to the amended petition of the petitioner dated 20th March 2018. It was also the Respondent's case that he is the one who established the rice buying business for his wife and which she ran and managed as family business.
56. The court takes the following view of the properties:



Plot No. XXXX Wang'uru Market

57. This Plot is registered in the names of the Petitioner alone and there is evidence that she bought the same vide a sale agreement dated 12.5.2008 for Kshs. 1,600,000/= as per the copy of sale agreement listed as item 18 in the Respondent list of documents. The respondent submitted that they bought the plot together through a loan of kshs 1,600,000 from [particulars withheld] Sacco
58. Although the Respondent has not availed concrete evidence of his specific contribution to the purchase, he has exhibited statements showing he took out loans in 2008, and that as late as July 2014 both parties were making deposits and withdrawals from the business Account KRep No 01XXXXXX94 (marked "VSM 7"). Both parties claim the business was theirs. Both produced accounts of the business.
59. This property is the subject of distribution.

Plot No. XXXX Wang'uru Township

60. The above Plot is registered in the names of the Petitioner. It is clear from the Minutes extract WTPM&H219/2012 that it was a sub-division from Plot No. XXXX Wang'uru registered between Petitioner and others.
61. There is no allegation of, or proof that, the Respondent contributed in any way towards its acquisition and no such evidence was furnished before the court and we humbly submit that this Plot is not available for distribution in favour of the Respondent and pursuant to Section 7 of the Act, the Respondent has no legal claim to this property.

LR Mwea/Tebere/B/XXXX

62. The respondent testified that the plot was bought by the petitioner in 2013. It cost Kshs 1 million. He has availed no documentation to prove that the property exists. It cannot be the subject of division between the parties unless the existence is proved.

Business Run as [particulars withheld] Stores & [particulars withheld] Pakistan

63. The petitioner submits that the Respondent has not produced sufficient and admissible evidence to prove the existence of Businesses like the [particulars withheld] Rice Stores and [particulars withheld] Pakistan.
64. It was also the Respondent's case that he is the one who established rice buying business for his wife and which she ran and managed as a family business. He testified that his name was not in directorship of [particulars withheld] because he was engaged in his work as a police officer.
65. The respondent stated in Para 10 of her further affidavit of 19/4/2015 that she started selling Pakistan rice and deposited the [particulars withheld] business proceeds into her KRep Account and exhibited the statement Account No 03XXXXX70. The statement is from 1st January 2008 to February 2015 and most of the transactions and deposits are in the name of the petitioner. However, there are deposits and transactions in the name of the respondent from February 2011, in July 2012, October 2013, and so on. This suggests that both parties had a role in the business and hence the activities in the account.
66. In the KRep Statement of the respondent mentioned earlier ("VSM 7"), there are similarly more transactions by the respondent, but also a substantial number of transactions by the petitioner. Again this suggests that the both parties participated in the business.



67. I find that this business is the subject of distribution between the parties.

Motor vehicle registration number KBH XXXX Toyota Ipsum

68. The respondent submitted that the petitioner sold this motor vehicle, but has provided no evidence its ownership or the sale. This vehicle is not the subject of distribution.

LR Mwea/Tebere/B/XXXX

69. The Respondent has alleged that, this Plot belonged to Petitioner but was sold out to JKN. He has produced a copy of green card showing that the Petitioner bought the same on 10.11.2010 for Kshs. 100,000/= and sold it out on 25.11.2014 and since the Plot is in the names of a 3rd party, the same is not available for distribution. In any event, the Respondent has not alleged or given any evidence to indicate that she has an interest or made any monetary contributions towards its acquisition at all. This plot is not available for distribution.

LR Mwea/Tebere/B/XXXX

70. The Plot herein is registered in the names of the Petitioner and same is charged with Family Bank Limited to secure the sum of Kshs. 1,300,000/=, The petitioner asserts that the Respondent has not furnished any evidence as to his contributions towards the acquisition of the same by the Petitioner and in absence of such admissible evidence, the same is not available for distribution in view of Provisions of Section 6 and 14 of the Matrimonial Properties Act. the petitioner prays that the respondent's claim be dismissed.

71. The respondent testified that the plot was bought by the petitioner when the respondent was working at Kabati Police Station. he stated that it was bought from proceeds of Agano Stores for Kshs 300,000/- and should form part of matrimonial property.

72. The basic principle established by section 6 of the *MPA* is that matrimonial property includes property acquired during the subsistence of the marriage. Whilst the respondent had a steady income as a police officer, the petitioner began as a housewife but in due time came into her own, managing and running businesses that thrived and earned her income in her own right.

73. in this case, it is clear that her key source of income was the rice business under Agano. In my view both parties participated in that business. I would place this property under the category of matrimonial property available for distribution.

74. It is clear to this court that the *Matrimonial Property Act* of 2013 recognizes and formalizes both the monetary and non-monetary contribution of parties in a marriage. In *NWM v KNM* (2014) eKLR it was stated that “the court must give effect to both monetary and non-monetary contributions that both the applicant and the Respondent made during the currency of the marriage to acquire the matrimonial property.

75. Section 7 of the *Matrimonial Property Act* is clear in its terms that:

“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.”

76. In this case, the petitioner has not shown how she acquired the said property without the contribution of the respondent. There is also no clear evidence of the ratio of the contribution of each party. The



petitioner was able to secure loans from SACCOs as she was a housewife and a trader, while the respondent was able to secure bank loans as he was employed as a police officer. Bot operated business accounts with KRep Bank and both parties participated in each other's said accounts as already shown herein.

77. As was submitted by the petitioner Article 45 of the Constitution of Kenya 2010 is very clear that, the parties to a marriage have specific rights to matrimonial properties before, during the subsistence of the marriage and even after the dissolution of the same. It is trite law that, such entitlement is not on 50:50 ratio basis but in accordance with the parties' capacity and level to make a contribution.
78. The Petitioner cited the case of Malindi High Court Matrimonial case No. 16 of 2014: FS v F.Z in which Chitembwe J considered the issue of monetary/financial contribution and non-monetary contributions and proceed to share out matrimonial properties therein.
79. The respondent submitted that this court do share the matrimonial properties set out in paragraph 7 of the Respondent's amended answer to the petition on 50:50 basis. This was premised on the fact that the Petitioner did not adduce evidence of any source of income other than the family business which were started with capital provided by the Respondent. In AWM v JGK [2021] eKLR it was held:

“Considering all the evidence in this case, it is clear to me that the Respondent enjoyed a much higher salary than that of the Applicant. That notwithstanding, the Applicant rose up to the occasion and matched up her contribution both monetary and non-monetary. Evidence shows that the Applicant in most cases contributed almost half or higher of the purchase price of the matrimonial properties in addition to non-monetary contribution.”

Disposition

80. I think I have said enough concerning the properties in this matter. I now summarise the outcome of my findings as follows:
1. There is sufficient evidence to conclude that the marriage between the petitioner and the respondent has broken down irretrievably, and should be dissolved.
 2. Plot No. XXX Wang'uru Township and Plot No. XXXX Wang'uru Township: These are not disputed as matrimonial property and are available for distribution.
 3. Plot No. XXXX Wang'uru Market: This property is the subject of distribution.
 4. Plot No. XXXXX Wang'uru Township: the Respondent has no legal claim to this property.
 5. LR Mwea/Tebere/B/XXXX: This property cannot be the subject of distribution between the parties as its existence is not proved.
 6. The Business Run as [particulars withheld] Stores & [particulars withheld] Pakistan: This business is the subject of distribution between the parties.
 7. Motor vehicle registration number KBH XXXX Toyota Ipsum: In the absence of evidence of its owner
 8. ship or the sale, this vehicle is not the subject of distribution.
 9. LR Mwea/Tebere/B/XXXXX: This plot is not available for distribution.
 10. LR Mwea/Tebere/B/XXXX : This property is under the category of matrimonial property and available for distribution.



81. I order and direct as follows:

1. The marriage between the petitioner and the respondent is hereby dissolved
2. The properties stated as available for distribution herein shall be shared equally between the petitioner and the respondent

82. Parties shall bear their own costs.

83. Orders accordingly.

DATED AT KERUGOYA THIS 22ND DAY OF SEPTEMBER, 2023

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R. MWONGO

JUDGE

Delivered in the presence of :

1. Mr. Kahiga for the Petitioner
2. Mr. Muchira for Respondent

Also Present:

3. VS
4. LM - In chambers
5. Court Assistant - Murage

