



**GGN v BOO (Matrimonial Cause 2 of 2024)**  
**[2025] KEHC 16242 (KLR) (4 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 16242 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT KISII**  
**MATRIMONIAL CAUSE 2 OF 2024**  
**TA ODERA, J**  
**NOVEMBER 4, 2025**

**BETWEEN**

**GGN ..... APPLICANT**

**AND**

**BOO ..... RESPONDENT**

**JUDGMENT**

**Background**

1. Before me is an application dated 19<sup>th</sup> February 2024 filed by GGN by way of Originating summons under Section 1A, 1B, 3, 3A & 80 of the [Civil Procedure Act](#) (Cap.21), and Order 45 and 50 of the Civil Procedure Rules as well as Article 159 of [the Constitution](#) of Kenya.
2. The prayers in the application are as follows: -
  - a. That a declaration be made that the property xxxx/xxxx parcel of land 11/5142 with all the developments therein was acquired during the subsistence of the Applicant and Respondent marriage and hence the same be registered in the name of the Applicant or the alternative of this Honourable court orders that the same to be shared equally.
  - b. That the property xxxx/xxxxx parcel of land 11/5070 with all the developments thereon was acquired during the subsistence of the Applicant and the Respondent marriage and hence the same be registered in the name of the Applicant and Respondent all in the alternative the Honourable court orders that the same be shared equally.
  - c. That the property xxxx/xxxxx parcel of land 5147 with all the developments thereon was acquired during the subsistence of the Applicant and Respondent marriage and hence the same be registered in the name of the Applicant and Respondent or in the Alternative orders that the same be shared equally.



- d. That the Property xxxx/xxxxx parcel of land 5541- with all the developments thereon was acquired during the subsistence of the Applicant and the Respondent marriage and hence the same be registered in the name in the name of the Applicant and Respondent or in the alternative and Honourable court orders that the same be shared equally.
- e. A declaration that the property W/Bogusero parcel of land 696-2009 with all the developments thereon was acquired during the subsistence of the Applicant and Respondent Marriage and hence the same be registered in the name of the Applicant and Respondent all in the alternative the Honourable court orders that the same be shared equally.
- f. A declaration that the property xxxx/xxxxx parcel of land 4575- 18/4/2013 with all developments thereon was acquired during the subsistence of the Applicant and Respondent or in the Alternative the Honourable court orders that the same be shared equally.
- g. A declaration that Motor vehicle No.
  - a. KBG xxxx -Lorry
  - b. KBU xxxx -Lorry
  - c. KBY xxxx - Crown Athlethe
  - d. KCD xxxx – Mercedes Benz class F
  - e. KBU xxxx – Land Rover Discovery 3
  - f. KCA xxxx – Nissan Matatu 14-seater Van
  - g. KBY xxxx – Nissan Pick-up
  - h. KAR xxxx – 14-Seater Van were acquired during the subsistence of the marriage and the same be sold and the proceeds be shared between the parries herein.
  - i. A declaration that proceeds from the distribution company xxxx LTD which was owned jointly during the subsistence of the Applicants and respondent’s marriage be shared equally between the Applicant and the Respondent.
  - j. A declaration that the proceeds which are earned by xxxx RESORT, a three-star hotel which was constructed during the subsistence of the Applicant and Respondents Marriage be shared equally between the Applicant and the respondent.
  - k. That the costs of this suit be provided to the applicant.
3. In response to the application, the Respondent filed a replying affidavit sworn on the 24<sup>th</sup> June 2024, deponed that the Application is misconceived, vexatious, extremely scandalous and only meant to justify the Applicants attempts to harvest seeds from a farm she never tilled, watered to justify her selfish gains and can only be described as a fortune seeker.
4. The respondent deponed that he met the Applicant sometime in Kisii in the year 2000 when he was working as a supervisor based in Kisumu County and that they began their friendship and courtship subsequently thereafter until on or about 11<sup>th</sup> August 2001 when the respondent was introduced to the Applicants Parents at Nyakongo within Kisii County. They thereafter got married and they were blessed with three issues namely;
  - a. ESO – born on 31.03.2002



- b. EPO –born on 12.08.2007
  - c. KSO –born on 5.05.2014
5. He deponed that the marriage was characterized by constant disagreements and quarrels that led him to live separately from the applicant and that the foregoing prompted him to file a divorce vide Divorce Cause No. 424 of 2029 on 16<sup>th</sup> May 2019 upon which a decree nisi and decree absolute were subsequently issued.
  6. The respondent also told this court that the applicant has not demonstrated and or quantified what financial support she allegedly tendered towards the acquisition and development of the purported matrimonial property as alleged.
  7. The respondent also avers that he is not aware of the any vehicle under registration number KDG xxxx as stated and that he is only aware of motor vehicle number KBG xxxx which he purchased sometime in 2015 on a cash basis from his KCB Account to the vendor and that the Applicant did not contribute any sums towards its acquisition.
  8. Further the respondent questioned that why the Applicant did not press any criminal charges for the purported illegal transfer on the motor vehicle KBG xxxx if at all it was illegally and without consent to the Applicant herein and that the Applicant must demonstrate with precision what contribution she made towards any acquisition of matrimonial property whether direct or indirect and that the applicant has failed to prove her case on balance of probability.
  9. The respondent relied on the case of P N N vs. Z W N where Justice Kiage held as follows;
 

“To my mind, all that the Constitution declares is that marriage is a partnership of equals. No spouse is superior to the other. In those few words all forms of gender superiority whether taking the form of open or subtle chauvinism, misogyny, violence, exploitation or the like have no place. They restate essentially the equal dignity and right of men and women within the marriage compact. It is not a case of master and servant. One is not to ride rough shod over the rights of the other. One is not to be a mere appendage cowered into silence by the sheer might of the other flowing only from that other’s gender. The provision gives equal voice and is meant to actualize the voluntariness of marriage and to hold inviolate the of the marital space. So, in decision making; from what shall be had for dinner to how many children (if any) shall be borne, to where the family shall reside or invest-all the way to who shall have custody of children and who shall keep what in the unfortunate event of marital breakdown, the parties are equal in the eyes of the law”
  10. He submitted that the issue for determination is whether the Applicant, GGN , is entitled under the Matrimonial Property Act, No. 49 of 2013, to a share of properties, vehicles, and businesses acquired during, before, and after her marriage to him and urge this Honourable Court to find, on law and fact, that the Applicant’s claim is wholly unmerited, lacks evidentiary and legal foundation, and is an impermissible attempt at unjust enrichment. Also, that the properties herein cannot be defined as matrimonial property as the applicant and the Applicant never contributed whether directly or indirectly to the acquisition of the same. Further that the applicant did not challenge the validity of the respondent’s bundle of documents filed and produced herein.
  11. Also, that the respondent was the sole bread winner of the family in the early years of marriage as he was employed at Gap Marketing earning Kshs. 28,000 monthly while the Applicant was a housewife until about 2012. Respondent said he also took applicant for a vocational training vocational training at matata Nursing Home and paid her fees of Kshs. 30,000/=. Also, that the Respondent employed



the Applicant as a regional supervisor in his venture, xxxx Marketing Limited. He said he started her with a salary of Kshs. 18,178 in the year 2012 and this rose up to Kshs. 50,948 to the year 2019 and that the respondent used her salary for her personal upkeep only.

12. It was also submitted that the marriage broke down irretrievably forcing parties to live separate from the year 2014 and the respondent finally filed a Milimani Divorce Cause No. 424 of 2019 which was heard determined and the marriage was dissolved. The Respondent submitted that, he thereafter remarried and he is living with the children of born with applicant and he is the one providing for all their needs. He submitted that properties acquired after dissolution of the marriage do not form part of matrimonial property. In summation of the evidence tendered, it is the Respondent's case that the properties forming part of the instant suit do not form part of matrimonial property available for share with the Applicant who never contributed directly and or indirectly to its acquisition.
13. The Respondent submitted that the issues for determination;
  - a. The Law on Matrimonial Property in Kenya.
  - b. Whether the Properties listed in the Originating Summons are deemed to be Matrimonial Property and if so, whether the Applicant's contribution is ascertainable.
  - c. The Question of costs.
14. It was submitted that Matrimonial Property Act No. 49 of 2013 (hereinafter "the Act/MPA") is the law applicable in determination of matrimonial properties in Kenya and that the same was enacted to give effect to Article 45(3) of the Constitution of Kenya. Also, that Section 6(1) of the Act identifies matrimonial property as including: (a) The matrimonial home or homes, household goods and effects in the matrimonial home, any other immovable and movable property jointly owned and acquired during the subsistence of the marriage. Section 7 of the Act on the other hand stipulates that 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. It was submitted that there is no automatic presumption of joint ownership or equal sharing of properties acquired during subsistence of a marriage under the Act and the same is subject to proof.
15. Respondent also cited the case of Peter Mburu Echaria vs. Priscilla Njeri Echaria, The Court of Appeal had occasion to interpret the above Section 17 Married Women Property Act, 1882 [hereinafter referred to as the "MWPA"] and held thus;

"In all the cases involving disputes between husband and wife over beneficial interest in the property acquired during marriage which have come to this Court, the court has invariably given the wife an equal share (see *Essa vs. Essa* (supra); *Nderitu vs. Nderitu*, Civil Appeal No. 203 of 1997 (unreported), *Kamore vs. Kamore* (supra); *Muthembwa vs. Muthembwa*, Civil Appeal No. 74 of 2001 and *Mereka vs. Mereka*, Civil Appeal No. 236 of 2001 (unreported). However, a study of each of those cases shows that the decision in each case was not as a result of the application of any general principle of equality of division. Rather, in each case, the court appreciated that for the wife to be entitled to a share of the property registered in the name of the husband, she had to prove contribution towards the acquisition of the property. The court considered the peculiar circumstances of each case and independently assessed the wife's contribution as equal to that of the husband

Further that "Contribution" is defined under Clause 2 of the Act expansively to include:  
- Monetary contributions (actual funds committed to purchase, mortgage repayments, improvements, etc.),



Non-monetary contributions (domestic work, childcare, companionship, care and management the matrimonial home, management of family business or property, and farm work). However, mere ownership or occupation does not confer proprietary rights. For an asset to be divisible as matrimonial property, it must be both “acquired during marriage” and be the subject of spousal contribution. He also cited the Supreme Court in *P.N.N. v Z.W.N.* [2023] KESC 46 (KLR) clarified the law on this point thus:

“...It is upon the person claiming interest in matrimonial property to demonstrate their contribution towards the acquisition, preservation or improvement of the subject property. It is not enough to rest on the mere fact of marriage or to rely on amorphous assertions of indirect contribution; particularization and proof are mandatory.” Also, *Federation of Women Lawyers Kenya (FIDA-K) & 5 others v Attorney General & another* it was observed thus:

“Division of matrimonial property is governed by the principle of contribution. The notion of a 50:50 split, although constitutionally rooted in the right to equality, does not mean an automatic equal share absent proof. The underlying inquiry remains the spouses’ proportional respective inputs.”

Respondent also relied on the decision of Justice Ong’udi in *M.W.M v C.M.M* [2023]{} who held that:

“Not every act of homemaking or companionship, absent evidence tying it to asset acquisition or improvement, qualifies as a non-monetary contribution under the law.”

- i. For non-monetary contributions such as domestic work, childcare, business management, or general support, the law expects a claimant to not only assert but particularize and evidence how these efforts enabled the other spouse to acquire or enhance specific property. This requirement is made explicit in recent Kenyan and foreign case law which refuses to equate mere existence in a marriage with property rights as highlighted above.

The respondent also cited English case of *Burns v Burns* where it was held that where it was held that -

“Mere domestic activity does not, by itself, create an interest in property; there must be proof that the parties intended the asset to be jointly owned or that the claimant made a direct financial contribution or carried out specific quantifiable work which increased its value.”

**Whether the Properties listed in the Originating Summons are deemed to be Matrimonial Property and if so, whether the Applicant’s contribution is ascertainable.**

16. The respondent also told this court that it is trite law in Kenya that contribution to acquisition or improvement of the properties must be proved for each asset before the property can be declared to be matrimonial and that the applicant had this burden but she failed to discharge the same. He also cited Justice Francis Tuiyott [as he then was] in the case of *UMM vs. IMM* at paragraph 21 held thus;

“..... I take the view that at the dissolution of the marriage each partner should walk away with what he/she deserves. What one deserves must be arrived at by considering



her/his respective contribution whether it be monetary or non-monetary. The bigger the contribution, the bigger the entitlement. Where there is evidence that a non-monetary contribution entitles a spouse to half of the marital property then, the Courts should give it effect. But to hold that Article 45(3) decrees an automatic 50:50 sharing could imperil the marriage institution. It would give opportunity to a fortune seeker to contract a marriage, sit back without making any monetary or non-monetary contribution, distress the union and wait to reap half the marital property. That surely is oppressive to the spouse who makes the bigger contribution. That cannot be the sense of equality contemplated by Article 45(3)” [Emphasis ours]

## **MOTOR VEHICLES:**

17. On acquisition and ownership of the motor vehicles and the Land parcel the respondent submitted as follows and I quote -:

“Motor Vehicle Registration Number KBG xxxx [Lorry].

- a. Evidence before the court, both testimonial and documentary, shows the Respondent solely purchased KBG xxxx in July 2015 from Hamos Enterprises Limited for Kshs. 5 million, paid in full from his KCB bank account. The Applicant did not present, nor even particularize, a single payment, transfer, or contemporaneous communication evidencing a financial or non-financial contribution to this purchase. She produced no M-Pesa records, transfer instructions, or witness corroboration.
- b. Additionally, the Respondent’s purchase and subsequent sole use of the lorry for his construction and business activities further negate any argument of joint management or intention. The Applicant’s contention of an “illegal transfer” or forged registration certificate (Annex GGN-3) is wholly unsupported, no criminal complaint was filed, and no independent audit or Government record substantiates her title claim. The law is clear: in the absence of material evidence or even a credible assertion of contribution, the threshold in *Burns v Burns* and *Echaria v Echaria* is not met.
- c. In fact, her failure to act when the “illegal transfer” allegedly happened supports the view, in the words of *Mugweru v Muraya*, that “a party who stands by knowingly disqualifies their later claim in equity.”

20.2. Motor Vehicle KBU xxxx .

- (a) It is the Respondent case that this vehicle is not owned by the Respondent personally, but is an asset of xxxx Marketing Ltd, co-owned and charged to Kenya Commercial Bank. No evidence suggests the Applicant invested capital, held shares, or contributed to asset finance payments.

20.3. Motor Vehicle KBY xxxx .

- (a) From the evidence adduced before this Honourable Court, this vehicle was purchased sometime in July 2015 for Kshs. 1.8 million from Respondent’s personal funds and was subsequently sold to pay school fees due to hardship. The proceeds did not result in personal gain, and the Applicant did not object then. There is no proof of her funding, registration, or concern during sale.



20.4. Motor Vehicle KCD xxxx (Mercedes Benz).

- (a) This vehicle was acquired sometime in 2020 which was after the marriage herein was dissolved, placing it outside the scope of Section 6 and 7 of the Matrimonial Property Act.

20.5. Motor Vehicles KBU xxxx , KCA xxxx , KBY xxxx , and KAR xxxx .

- a. The uncontroverted evidence adduced to this Honourable Court through the logbooks and certificates of motor vehicle search demonstrate that the above vehicles are shown to be owned by the Respondent's current spouse, third parties, or his company; logbook and registration searches provided confirm this beyond peradventure.
- b. No evidence was offered by the Applicant tracing funds or stint of effort to any of these vehicles. There was no witnessed management, maintenance, or use by her for family benefit, nor any record of paying running costs or insurance.

#### LAND PROPERTIES.

21.1. Land Title No.: xxxx/xxxxx 11/5070 & 11/5142.

- a. The chronological account and exhibits show that the Respondent purchased both parcels for Kshs. 1,750,000 from John Mose Isena with money withdrawn solely from his personal account all of which was done sometime in 2015 and 2016 during which time the Applicant and Respondent had separated. The Applicant adduced evidence that he handled the scouting, negotiation, conveyancing, and eventual development.
- b. At the relevant time, the Applicant (per her own and Respondent's evidence) was not co-residing, but living separately in Kisii County for extended periods and fully employed elsewhere. She did not give or arrange funds, manage construction, or participate in visits to the land. No single payment receipt, bank transfer indicating her input, or testimony from the seller/advisors supports her claim. As was held in *M.W.M v C.M.M* [2023] KEHC 21468 (KLR), the court must find her claims unsubstantiated. "

#### Analysis of determination

18. I have carefully considered the application, the replying affidavit as well as the rival written submissions and the issues of determination are
  1. Whether the properties listed by the Applicant constitute Matrimonial Property and if so,
  2. The nature and extent of the Applicant's contribution to the acquisition and development of the said properties.
  3. The ration of sharing of the assets between the applicant and the respondent.

#### Analysis

20. On whether all the properties listed in the originating summons herein, it is not disputed that the parties herein got married n are matrimonial property, it is not disputed that the partis herein got married in the year 2021 and where they were blessed with three issues. However, the marriage was





dissolved in 19<sup>th</sup> September 2019 vide a Divorce Cause no. 424 of 2019. Section 6 of the matrimonial property acts defines matrimonial property as follows-

- (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 any other immovable and movable property jointly owned and acquired during the subsistence of the marriage.
- (2) Despite subsection (1), trust property, including property held in trust under customary law, does not form part of matrimonial property.(3)Despite subsection (1), the parties to an intended marriage may enter into an agreement before their marriage to determine their property rights.(4)A party to an agreement made under subsection (3) may apply to the Court to set aside the agreement and the Court may set aside the agreement if it determines that the agreement was influenced by fraud, coercion or is manifestly unjust.

I have carefully perused the searches logs book copies and company documents filed and produced by the respondent herein and I note as follows;

- i. Land parcel no xxxx/xxxx parcel of land 11/5142 registered in the name of the respondent.
- ii. That the property xxxx/xxxxx parcel of land 11/5070 registered in the name of the respondent.
- iii. That the property xxxx/xxxxx parcel of land 5147 is registered in the name of Alfred Mincha a Masaki and supported by a land sale agreement dated 31.12.12 between the respondent and Alfred Mincha.
- iv. Land parcel no. xxxx/xxxxx parcel of land 5541- there are no supporting documents filed.
- v. Land parcel no. W/Bogusero parcel of land 696- there are no supporting documents
- vi. Land parcel xxxx/xxxxx parcel of land 4575- there are supporting documents filed.  
On the motor vehicles they are owned as follows;
- vii. KBG xxxx -Lorry- As per the copy of records dated 7.7.23 the respondent was the registered owner while the applicant was the previous owner.
- viii. KBU xxxx -Lorry- registered in the name of KCB and xxxx marketing
- ix. KBY xxxx - Crown Athlete – is registered in the name of the respondent
- x. KCD xxxx – Mercedes Benz class F- registered in the name of the respondent.
- xi. KBU xxxx – Land Rover Discovery 3- registered in the name of Willis Osore.
- xii. KCA xxxx – Nissan Matatu 14-seater Van -registered in the name of Edna Kerubo.
- xiii. KBY xxxx – Nissan Pick-up and – registered in the name of Fidelity bank and Vehicle equipment leasing.
- xiv. KAR xxxx – 14-Seater Van -registered in the name of Regina Muthoni Wainaina.
- xv. xxxx marketing company limited – registered on 6.5.10





xvi. xxxx company limited registered in 2019 in the names of respondent their children.

xvii. xxxx limited registered on 19.2.15.

18. From the evidence on record the suit properties were acquired during the subsistence of the marriage.
19. On whether the said properties are matrimonial, the applicant said they are matrimonial while respondent denied this. The applicant told this court that she ran the family home, managed family businesses, cared for the children, paid their fees, attended school meetings, bought them food and clothes, managed family businesses and supervised construction of xxxx hotel and provided emotional support to the respondent during the subsistence of the marriage. The respondent denied this saying the properties are not matrimonial but properties as he solely acquired with his own monies and that the applicant contributed nothing towards the same. Also, that the respondent was an irresponsible mother who did not care for the welfare of their children. I have considered the rival positions of the parties herein on the issue of matrimonial property and I have seen the annexed divorce pleadings herein where the respondent said that he lived with the applicant as husband and wife for 17 years. He complained that their problems started in the year 2017 and that in the year 2019 he filed the divorce. (as per the petition) The judgment in the divorce case was not produced herein and so this court cannot tell the specific grounds on which the divorce was granted. However, it is clear the marriage was officially dissolved in the year 2019 for having broken down irretrievably as per the decree absolute filed (Dexh 6).
20. It is trite law that he who alleged must prove and thus the applicant had the burden to prove that all the listed properties were matrimonial. I also appreciate that mere marriage does not make properties acquired during a marriage to be matrimonial. it must be proved that the spouse contributed directly or indirectly to the acquisition of the same. The respondent filed copies of titles some of the listed parcels, copies of records of the vehicles and the companies' documents. The applicant did not prove that the following properties are either registered her name or respondent 's name and thus they are not matrimonial properties:
  - a. KBU xxxx – Land Rover Discovery 3
  - b. KCA xxxx – Nissan Matatu 14-seater Van
  - c. KBY xxxx – Nissan Pick-up and
  - d. KAR xxxx – 14-Seater Van
18. The applicant has proved that following properties were acquired during the subsistence of the marriage between her and the respondent herein between the year 2021 and 2019:
  - i. Land parcel no xxxx/xxxx parcel of land 11/5142
  - ii. That the property xxxx/xxxxx parcel of land 11/5070
  - iii. That the property xxxx/xxxxx parcel of land 5147 is registered in the name of Alfred Mincha a Masaki and supported by a land sale agreement dated 31.12.12 between the respondent and Alfred Mincha.
  - iv. KBG xxxx -Lorry- was registered in name of the applicant but was later transferred to the name of the respondent
  - v. KBU xxxx -Lorry- registered in the name of KCB and xxxx marketing.
  - vi. KBY xxxx - Crown Athlete – is registered in the name of the respondent



- vii. KCD xxxx – Mercedes Benz class F- registered in the name of the respondent.
- viii. xxxx marketing company limited.
- ix. xxxx company limited.
- x. xxxx s limited.

On whether the applicant contributed to the acquisition of the said property same, though the respondent has shown that at some point the applicant was not able to properly take care of the children and he got custody orders (Dexh 4 ) and that the applicant was suffering from depression and he also produced a medical report(Dexh 6) showing that the applicant had depression at some point and hence he was granted custody of the children; this cannot be used to conclude that she was not able to take care of the children throughout the subsistence of the marriage. it cannot be true that the applicant did not contribute to the acquisition of the said properties at all as it has emerged from her evidence that she worked for one of the companies herein i.e xxxx as the marketing manager and her evidence of child care, emotional support, management of the properties, purchase of materials and supervision of construction of xxxx hotel was not controverted. Section 6 of the matrimonial property acts defines the Meaning of matrimonial property

(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 any other immovable and movable property jointly owned and acquired during the subsistence of the marriage.

(2)Despite subsection (1), trust property, including property held in trust under customary law, does not form part of matrimonial property.(3)Despite subsection (1), the parties to an intended marriage may enter into an agreement before their marriage to determine their property rights.(4)A party to an agreement made under subsection (3) may apply to the Court to set aside the agreement and the Court may set aside the agreement if it determines that the agreement was influenced by fraud, coercion or is manifestly unjust.

18. In the case of JOO v MBO; Federation of Women Lawyers (FIDA Kenya) & another (Amicus Curiae) (Petition 11 of 2020) [2023] KESC 4 (KLR) (Family) (27 January 2023) (Judgment) while dealing with the issue of contribution to matrimonial property held that:

“ 12. Equity was an important principle when it came to matrimonial property since what was fair as it related to equity was not a question of the quantitative contribution by each party but rather the contribution by any party in any form, whether direct or indirect. Any substantial contribution by a party to a marriage that led to the acquisition of matrimonial property, even though such contribution was indirect, but had in one way or another, enabled the acquisition of such property amounted to significant contribution. Such direct or indirect acts included:

- a. Paying part of the purchase price of the matrimonial property.
- b. Contributing regularly to the monthly payments in the acquisition of such property.
- c. Making a substantial financial contribution to the family expenses to enable the mortgage installments to be paid.
- d. Contributing to the running of and welfare of the home and easing the burden of the spouse paying for the property.



- e. Caring for children and the family at large as the other spouse worked to earn money to pay for the property.
13. While article 45(3) of *the Constitution* dealt with equality of the fundamental rights of spouses during and after the dissolution of marriage, equality did not mean the re-distribution of proprietary rights at the dissolution of a marriage. Neither did the reading of that provision lead to the assumption that spouses were automatically entitled to a 50% share by fact of being married.
14. The stated equality under article 45(3) of *the Constitution* meant that the courts were to ensure that at the dissolution of a marriage, each party to a marriage got a fair share of the matrimonial property based on their contribution. That was best done by considering the respective contribution of each party to ensure no party was unfairly denied what they deserved as well as ensuring that no party was unfairly given more than what he or she contributed.
15. In a marriage, the general assumption was that both spouses shared everything and on the face of it, both parties contributed towards the home or family in one way or another, to whichever extent, however big or small. “
18. I find that the applicant has proved that she contributed to the acquisition of the property listed in paragraph 22 (Supra) by running the family, caring for the children, giving emotional support to the respondent, managing family businesses and child as per the threshold set in the case JOO v MBO (supra). The said properties are thus matrimonial within the meaning of section 6 of the Matrimonial Properties Act.

The applicant has proved that following properties were acquired during the subsistence of the marriage between her and the respondent herein.

- a. Land parcel no xxxx/xxxx parcel of land 11/5142
- b. That the property xxxx/xxxxx parcel of land 11/5070
- c. That the property xxxx/xxxxx parcel of land 5147 is registered in the name of Alfred Mincha a Masaki and supported by a land sale agreement dated 31.12.12 between the respondent and Alfred Mincha.
- d. KBG xxxx -Lorry- was registered in name of the applicant but was transferred to the name of the respondent
- e. KBU xxxx -Lorry- registered in the name of KCB and xxxx marketing
- f. KBY xxxx - Crown Athlete – is registered in the name of the respondent
- g. KCD xxxx – Mercedes Benz class F- registered in the name of the respondent.
- h. xxxx marketing company limited.
  - i. xxxx company limited.
- j. xxxx s limited.
- k. On the ratio of sharing of by the applicant, the contribution by the applicant to acquisition of the matrimonial property cannot be quantified in monetary terms but her contribution ought to be considered in sharing of the matrimonial property. Article 45 (3) of *the constitution* provides that parties to a marriage have equal rights before, during and after marriage. However, Article 45 (3) of *the Constitution* should be interpreted in a manner to ensure equity



in distribution of matrimonial property in accordance with contribution of each spouse to lock out “gold diggers” who marry mainly for the purpose of getting property of the other spouse. The applicant sought that the properties be shared at 50 :50 but the respondent denied this. In the case of JOO v MBO (supra) it was held that it is not automatic that spouses will share the property at the ratio of 50 :50 as contribution of each must be considered. I have already found herein above that the applicant contributed to acquisition of the said matrimonial property. Considering that the applicant lived with the respondent for about 17 years, the nature of the properties acquired and all the relevant factors herein. I proceed to assess the contribution of the applicant to the total of the said properties to be at 30 % only.

18. I direct that the matrimonial property herein be valued and be shared at 70: 30 In favor of the respondent or the same be sold and the proceeds be shared in the same ratio.
22. This being a family matter there shall be no order as to costs.

**T. A ODERA**

**JUDGE**

**4. 11.25**

Delivered Virtually Via Team Platform in the Presence of:

Mr. Nyangito for the Applicant

Dawood Farah for the Respondent

Court Assistant - Kipchirchir

