



AK v PPR (Matrimonial Cause E001 of 2025)
[2025] KEHC 18052 (KLR) (3 December 2025) (Judgment)

Neutral citation: [2025] KEHC 18052 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
MATRIMONIAL CAUSE E001 OF 2025
RM MWONGO, J
DECEMBER 3, 2025

BETWEEN

AK **APPLICANT**

AND

PPR **RESPONDENT**

JUDGMENT

1. The applicant filed an OS dated 24th January 2025, in which he seeks the following orders:
 1. That this honourable court be pleased to find that the properties known as Gaturi/Weru/7XXX, Gaturi/Weru/7XXX, Kajiado/Kitengela/7XXX, Kajiado/Kitengela/7XXX and Kajiado/Kitengela/7XXX with all the buildings and developments thereon were all acquired through the applicant's own efforts during pendency of their marriage;
 2. That this honourable court be pleased to order sale of these properties with all the buildings and developments thereon and thereafter, the proceeds of such sale to be shared at the rate of 90% to the applicant and 10% to the respondent;
 3. That this honourable court do issue an order directing the respondent to vacate land parcels no Gaturi/Weru/7XXX and Gaturi/Weru/7XXX within 30 days from the date of the judgment to enable the sale and disposition of the said property;
 4. That the division to separate the interests of the properties be done within 90 days from the date of the judgment; and
 5. That the costs be provided for.
2. The applicant and respondent were married for 27 years from 1976, until their marriage was dissolved on 20th September, 2023. The applicant stated that he was working at a bank and he took out mortgages



to acquire the named properties without the respondent's contribution. This was notwithstanding that she also had an income from a business he set up for her. He stated that the respondent did not contribute financially or otherwise towards acquisition of the properties and so she cannot claim a part of them. He stated that the properties are all registered in his name and he produced copies of the title deeds as proof. That he singlehandedly took care of the children he had with the respondent and she even sued him for more maintenance at some point.

Replying Affidavit

3. Through her replying affidavit, the respondent stated that she hails from Embu County and that she is the one who identified the properties for purposes of purchase. She stated that in addition to the properties named by the applicant, there were also Gaturi/Weru/8XXX and Gaturi/Weru/8XXX; That the applicant sold these two without involving her and he forged spousal consents. She produced sale agreements for these 2 additional properties.
4. She stated that when the properties were being developed, she paid some of the required fees towards registration and furnishing the properties. That the matrimonial home was built solely from profits from her business, and during the period of acquisition and development of the properties, she took care of the children and cared for the home singlehandedly. She visited the construction sites, supervised the construction and paid the workers as the applicant worked away from home.
5. It was her case that the applicant only bought 2 properties through mortgages from his employer; That the other 5 properties were bought from proceeds of her business even though he registered the properties in his sole name. That it is not true that he singlehandedly provided for the children. The respondent had to move the court for maintenance orders because the applicant abdicated his role at some point. She has been caring for the children and paying for their education from proceeds of her business. She lives in the matrimonial home with the children who need it as their home.
6. She stated that she has used her money to renovate the matrimonial home and maintain it in good condition. It was her prayer that if the court should order sale of Gaturi/Weru/7XXX, Gaturi/Weru/ 7XXX, Kajiado/Kitengela/7XXX, Kajiado/Kitengela /7XXX and Kajiado/Kitengela/7XXX the proceeds thereof, including the proceeds from the sale of Gaturi/Weru/8XXX and Gaturi/Weru/8XXX be distributed between the parties considering all the aforementioned factors. She urged the court to take into consideration that childbirth and care for the issues of the marriage, caring for the home, doing housework and all other forms of care offered by the respondent, amount to a positive contribution by her.

Summary of the Evidence at trial

7. The matter was heard viva voce.
8. PW1 was the applicant who stated that his marriage to the respondent ended in December 2023 and since then, the respondent has been staying in the matrimonial home denying him access to the home. That in July 2024, he lost his job at the bank and he moved back to his home county of Kericho where he now stays. That he acquired the properties named in the application, which properties he wants to be sold and the proceeds be shared between him and the respondent at the ratio of 90%:10% in his favour.
9. In cross-examination, he stated that he did not own any properties before he got married to the respondent. That together, they acquired other properties which they also sold during the marriage. The proceeds from these sales were utilized by both of them. That he does not have a place to live in following the divorce. He said that the respondent refused to sell the matrimonial home so that they



could build a home in Kericho even though he suggested that the proceeds of the sale would go to a joint account.

10. That it is necessary that the respondent vacates the matrimonial home to enable it to be sold so that the proceeds can be shared in the ratio stated. He said that 2 of the 3 children he had with the respondent are now adults and they all live on parcel numbers Gaturi/Weru/7XXX and 7XXX which is their home. He stated that the respondent never supervised any construction in the Namanga property because there was a contractor on site. That the respondent was only entitled to 10% of the value of the properties.
11. RW1, the respondent, testified that the applicant was transferred to Namanga and he had a business there. He left her in Embu living with the children. While he was in Namanga, they acquired the properties in Gaturi/Weru. They constructed a house and moved in before it was fully completed but they developed it further as they lived in it and she contributed financially to the development. She stated that they had engaged a contractor to build their Namanga home but he left the work incomplete. She said that she took up the role of completing the house at her own expense and this included buying and installing tiles and other fittings.
12. The applicant sold 2 of their other properties and when he tried to sell the matrimonial home, she refused. She said that sometimes she used to pay school fees for her children and sometimes she did not have money especially when they were constructing the homes. In cross-examination, she stated that she had receipts to prove that she purchased some household items. She also spoke about her role of caring for the properties, the children, and financially supporting the development of the properties. She stated that the properties which were sold by the applicant were sold without her consent as the spouse.

Parities' Submissions

13. The parties filed their written submissions as directed by the Court.
14. The applicant submitted that the fact that the respondent is still living in the matrimonial home even after the divorce, shows how much the respondent was relying on the applicant. That she had income from a business but she chose not to participate in the household expenses. That he took out loans to buy the properties and the respondent did not contribute to the acquisitions in any way. That the respondent has not provided demonstrable proof that she participated in acquisition of the properties. He relied on section 7 of the *Matrimonial Property Act* and section 1A, 1B and 3A of the *Civil Procedure Act*. He urged the court to expeditiously order that the properties be sold and the proceeds be shared at a ratio of 90%:10% in favour of the applicant. He also urged the court to award him costs of the suit in accordance with section 27 of the *Civil Procedure Act*.
15. The respondent relied on the cases of PNN v ZWN [2017] KECA 753 (KLR), Echaria v Echaria [2007] eKLR, JOO v MBO; Federation of Women Lawyers (FIDA Kenya) & another (Amicus Curiae) [2023] KESC 4 (KLR), Burns v Burns ([1984] EWCA Civ 4), JNK v SPMK (2012) eKLR and White v White [2001] 1 AC 596. She also relied on Article 45(3) of *the Constitution* and section 107 of the *Evidence Act*, and stated that she had demonstrated her monetary and non-monetary contribution through her pleadings. She urged the court to find that the properties were acquired during the subsistence of the marriage with the contribution of both parties.
16. She sought that the matrimonial home being parcel numbers Gaturi/Weru/7XXX and Gaturi/Weru/7XXX be left to the issues of the marriage with the respondent holding the minor's part in trust for her. That parcel number Kajiado/Kitengela/7XXX and Kajiado/Kitengela/7XXX be given to the applicant. That Kajiado/Kitengela/7XXX be sold and the proceeds thereof be shared equally



between the applicant and the respondent. She also prayed that the applicant be reprimanded by the court for selling parcel numbers Gaturi/Weru/8XXX and Gaturi/Weru/8XXX unprocedurally and he be ordered to give half of the proceeds from that sale to the respondent.

Issue for Determination

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

Analysis and Determination

18. Through the OS herein, the applicant seeks that the properties he acquired in his name during the subsistence of the marriage be declared as his alone and that they be sold and the proceeds be shared at a ratio of 90%:10% in his favour. He disclosed that the properties are land parcel numbers Gaturi/Weru/7XXX, Gaturi/Weru/7XXX, Kajiado/Kitengela/7XXX, Kajiado/Kitengela/7XXX and Kajiado/Kitengela/7XXX.
19. First, it is important to define what constitutes matrimonial property. Section 14 of the *Matrimonial Property Act* provides as follows:

“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]
20. In this case, the named properties are all in the name of the applicant. In his testimony, he stated that he acquired the properties over the course of the 27 years of marriage to the respondent. That before the marriage he did not have any properties. He said that they took out mortgages twice to purchase the properties. The respondent stated that the applicant only took mortgages to buy 2 properties and that the rest of the properties were purchased through the joint efforts of the parties. That the respondent contributed to the purchase of those other properties using profits from her business.
21. Even though the properties are in the name of the applicant, the presumption in law is that the same were being held in trust for the respondent as the other spouse. In any event, there is no dispute that the properties were acquired during subsistence of their marriage. Therefore, the properties are all classified as matrimonial property. Matrimonial property is defined under section 6(1) of the *Matrimonial Property Act* 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
 - (c) any other immovable and movable property jointly owned and acquired during the subsistence of the marriage.” [Emphasis added]
22. Thus, matrimonial property is any property acquired during the marriage of the couple, irrespective of whether it is in the name of one or both spouses. This is the presumptive position of the law, but



it can be rebutted by evidence to the contrary. Matrimonial property also includes not just the homes, but the goods and effects in the matrimonial homes acquired during the subsistence of the marriage. These presumptions can be rebutted by evidence.

23. Regarding how the matrimonial property should be distributed, the court is bound to consider the contribution of both parties to acquisition of the matrimonial property and the circumstances of the case. In this case, the parties have 3 children, 2 of whom are adults and one is still a minor. Through her submissions, the respondent has proposed a mode of distribution which is different from the one proposed by the applicant which is that the properties be sold and the proceeds be shared. 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 provides as follows:

“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.”

24. 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;”

25. The respondent's contribution to the acquisition of the properties has been deeply contested by the applicant who stated that the respondent never participated in acquiring the properties. That he took out mortgages to acquire the properties while she demanded money from him for everything, not caring to pay for any expenses including contributing towards the household. The respondent contested this averment and she produced receipts to prove that she sometimes paid school fees for her children and she also incurred costs towards developing the properties.

26. In her testimony, she asserted that while the applicant was working away from home, she cared for the household and the children; and that she improved the matrimonial home so that it remained in habitable condition. She also periodically visited the other properties to ward off grabbers since they were not yet developed. In my view, there is no doubt from the evidence, that the respondent has proved monetary and non-monetary contribution to the acquisition of the properties.

27. Article 45(3) of *the Constitution* 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.”

28. 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). The Apex Court held as follows:

“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]

29. It is trite that every case must be tried based on its own unique set of facts (see *Francis Njoroge v Virginia Wanjiku Njoroge*, Nairobi Civil Appeal No. 179 of 2009). 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]

30. The respondent wishes to have the matrimonial home, housed under parcel numbers Gaturi/Weru/7XXX and Gaturi/Weru/7XXX, be left intact and in the names of the children of the marriage. Since one is a minor, she urged the court to make her a trustee for that minor. She also suggested that 2 of the Kitengela properties be registered to the applicant and one be sold and the proceeds be shared equally between the parties. On the other hand, the applicant wants all the properties to be sold and the respondent to get 10% of the value.

31. Regarding the properties Gaturi/Weru/8XXX and Gaturi/Weru/8XXX, the respondent has proved that they were disposed of without her consent as a spouse. She produced copies of the green cards showing the dates when they were acquired and disposed of. This occurred within the period when



the parties were married. The applicant, in his testimony, stated that there were other properties that were sold during the marriage and the parties utilized the proceeds thereof together.

32. In as much as these properties are regarded as matrimonial property before they were sold, the process of disposal and the procedure followed, if any, are questions that can or should be interrogated before the Environment and Land Court to ascertain whether the requirement for spousal consent was met or not. At this point in time, these properties ought to be excluded from matrimonial property herein because they are now held by a different person altogether, not the applicant.

Disposition

33. Ultimately, I am persuaded from the foregoing discussion that the aforesaid matrimonial properties should be dealt with as follows:

1. The properties known as Gaturi/Weru/7XXX, Gaturi/Weru/7XXX, Kajiado/Kitengela/7XXX, Kajiado/Kitengela/7XXX and Kajiado/Kitengela/ 7XXX with all the buildings and developments thereon were all acquired through the joint efforts of the applicant and respondent during their marriage. The applicant, being the registered owner holds and is deemed in law to hold, the properties in trust for the respondent;
2. Parcel numbers Gaturi/Weru/7XXX and Gaturi/Weru/7XXX being the matrimonial home should be registered jointly in the names of the applicant and respondent both being entitled to the properties at the ratio of 50%:50%. The Applicant shall be at liberty to purchase the Respondents share therein and vice versa; The parties shall effect the joint transfer and or purchase within 150 (One hundred and Fifty) days from the date hereof.
3. Parcel number Kajiado/Kitengela/7XXX, Kajiado/Kitengela/7XXX and Kajiado/Kitengela/7XXX shall be sold and the proceeds thereof shall be distributed between the parties at the ratio of 50%:50%.
4. Each party shall bear his/ her costs of the suit.

34. Orders accordingly.

DELIVERED ELECTRONICALLY, DATED AND SIGNED AT EMBU HIGH COURT THIS 3RD DAY OF DECEMBER, 2025, PURSUANT TO NOTICES ISSUED ON 24TH AND 26TH NOVEMBER 2025, AS TO ELECTRONIC DELIVERY.

.....
R. MWONGO

JUDGE

