



REPUBLIC OF KENYA



KENYA LAW
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**RMM v HKF (Originating Summons 1 of 2020)
[2025] KEHC 8370 (KLR) (17 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8370 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
ORIGINATING SUMMONS 1 OF 2020
SM GITHINJI, J
JUNE 17, 2025
IN THE MATTER OF THE CONSTITUTION OF KENYA
AND
IN THE MATTER OF MATRIMONIAL PROPERTY ACT, 2013
AND
IN THE MATTER OF LAND REGISTRATION ACT, NO. 3 OF 2012**

BETWEEN

RMM APPLICANT

AND

HKF RESPONDENT

JUDGMENT

1. For determination is the Originating Summons dated 30/1/2020 pursuant to Sections 12 and 17 of the [Matrimonial Property Act](#), Section 68 (1) of the [Land Registration Act](#), Order 37 of the Civil Procedure Rules and all other enabling provisions of the law, seeking orders that:
 1. This Honorable Court be pleased to order and declare that Land Parcel /Title Numbers Nyaki/Thuura/xxxx and Nyaki/Giaki/xxx, both registered in the name of the entity/company known as Konrod Limited, are matrimonial properties of the Applicant and the Respondent.
 2. Spent
 3. The Honorable Court be pleased to grant such further or other relief as may be just in the circumstances.
 4. The Respondent be condemned to pay the costs of this Originating Summons.



2. The application is premised on the grounds on the face of it and supported by an affidavit sworn by the Applicant on even date. She averred that she and the Respondent are the directors of Konrod Limited, (hereinafter referred to as the Company), and during the subsistence of their marriage, they purchased L.R No. Nyaki/Thuura/xxxx and Nyaki/Giaki/xxx (hereinafter referred to as the disputed properties), which were registered in the name of the Company. She learnt that the Respondent was looking for buyers to purchase the disputed properties and as a former spouse, she has a direct interest therein.
3. In his replying affidavit sworn on 23/9/2021, the Respondent averred that the disputed properties are not matrimonial properties because they are owned by the Company. He accused the Applicant of failing to disclose the existence of Nairobi HCCC No. 73/2017, which was resolved by consent, involving their only matrimonial property namely Apartment Number C8 on 3rd Floor, Millenium Gardens on L.R No. 330/xxxx, Nairobi. In fact, L.R No. Nyaki/Thuura/xxxx was registered in the name of the company on 7/1/2011 way before they solemnized their marriage on 4/2/2011, and the only reason the agreements for sale bear the name of the Applicant is because as a foreigner, he could not contract to purchase agricultural property. The Company was incorporated before the marriage on 3/12/2010 and the Applicant was not involved in the process.
4. The Respondent, in his further affidavit sworn on 21/2/2024 deponed that he solely paid the entire purchase price for the disputed properties and a trust over them was created in his favour.

Submissions

5. The Applicant through the firm of Meenya & Kirima Advocates filed undated submissions contending that the parties herein are directors in the Company with zero shares while Judy Thongori and Muthoni Murage hold 50 shares each. Counsel submitted that the Applicant managed the business affairs of the Company, including acquisition of the disputed properties, since she was a shareholder therein, and urged the court to consider Konrod Limited as a family company. It was submitted that the Applicant contributed to the acquisition of the disputed properties by signing the necessary documents to facilitate the transfer. Counsel relied on ROO v EOO (2021) eKLR to buttress those submissions.
6. The Respondent through the firm of Kounah & Co. Advocates filed submissions dated 31st January 2025 contending that as the beneficial owner of the Company and sole purchaser of the disputed properties, the Respondent held a resultant trust over them, and relied on Twalib Hatayan & Abdul Wahid Haji Yerrow v Said Saggat Ahmed Al-Heidy, Munira Said Saggat, Hania Said Saggat Al-Heidy, Fahmy Said Saggat Al-Heidy, Aboud Rogo Mohamed & Fatma Said Saggat [2015] KECA 713 (KLR), Burton v Madhivani [2024] KECA 517 (KLR) and Paul James Savage v Les Belles Sauvages Limited (In Liquidation) & Mona Hussein Duale [2019] KEELC 415 (KLR). Counsel confidently asserted that the disputed properties having been acquired before marriage without any contribution by the Applicant are not matrimonial properties, and cited NNN v SNM [2017] KEHC 3155 (KLR), TKM v SMW (2020) eKLR, Joseph Ombogi Ogentoto v Martha Bosibori Ogentoto (2023) eKLR and Ndutire v Kariuki [2024] KEHC 12900 (KLR). Counsel likened the Applicant's stake in the disputed property to robbing the Respondent of the fruits of his hard earned labour under the guise of matrimony.

Analysis and Determination

7. Having considered the application, the replying affidavit, the submissions by counsels and the authorities relied on. I find the core issue for determination to be whether the disputed properties are matrimonial properties.



8. Section 6 of the *Matrimonial Property Act* defines matrimonial property to mean;
 - (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.
9. Section 9 of the *Matrimonial Property Act* provides that;

“Where one spouse acquires property before or during the marriage and the property acquired during the marriage does not become matrimonial property, but the other spouse makes a contribution towards the improvement of the property, the spouse who makes a contribution acquires a beneficial interest in the property equal to the contribution made.”
10. Section 14 of the *Matrimonial Property Act* provides that;

“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.”
11. The undisputed evidence on record is that the Applicant and the Respondent solemnized their union on 4/2/2011 before shortly thereafter dissolving it. Indeed, the Applicant and the Respondent are not shareholders of the Company, with zero shares if the CR12 dated 2/3/2017 is anything to go by. The shareholders of the Company are Judy Wanjeri Thongori (deceased) and Muthoni Murage (deceased), with 50 shares each. The Respondent has exhibited bank statements to prove that he singlehandedly purchased the disputed properties without any monetary contribution whatsoever from the Applicant. To avert the legal hurdles the Respondent would face in acquiring freehold land in a foreign country, he allowed the Applicant, his beloved wife then, to execute the sale agreements for the purchase of the disputed properties on 8/10/2010 and 29/7/2011 on the understanding that they would eventually be registered in the name of the Company. The Applicant executed an acknowledgment nominating the Company to execute all the requisite documents, and the Company acquired titles thereto on 7/1/2011 and 13/9/2011.
12. The Respondent deponed that he purchased L.R No. Nyaki/Thuura/xxxx for the Applicant, and she was consequently registered as the sole proprietor thereto on 16/6/2011, as clearly shown by the certificate of official search adduced. The Applicant did not rebut that supposition, and it must be construed to be proof on a balance of probabilities that the Respondent financed the acquisition of L.R No. Nyaki/Thuura/xxxx for the exclusive benefit of the Applicant.
13. The Respondent has equally exhibited 2 Declarations of Trust for Shares in Konrod Limited dated 31/12/2010 executed by Judy Wanjeri Thongori and Muthoni Murage in favour of the Respondent, which read in part that;

“

 3. My executors, administrator and heirs undertake and agree that the interest held by me in the property known as Nyaki/Thuura/xxxx registered in the



name of the company or any other asset owned or that which may by the company is so held in trust for you absolutely.”

14. It was incumbent upon the Applicant, as the party alleging that the disputed properties are matrimonial properties, to proof what contribution, if any, whether monetary or non-monetary, she made in the acquisition of the disputed properties, to justify a claim thereto.
15. In *U M M v I M M* (Civil Suit 39 of 2012) [2014] KEHC 7534 (KLR) (12 February 2014) (Judgment), the court (T. Tuiyott J) rendered thus;

“As far as I can see it is the provisions of sections 2,6 and 7 of the *Matrimonial Property Act*, 2013 fleshes out the right provided by article 45 (3). By recognizing that both monetary and non-monetary contribution must be taken into account, it is congruent with the Constitutional provisions of article 45 (3) of *the Constitution* 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. 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).”

16. I find that the Applicant has failed to show that she either directly or indirectly contributed towards the acquisition and/or improvement of the disputed properties to be beneficially entitled thereto, in accordance with the provisions of section 9 of the *Matrimonial Property Act*.
17. Suffice to state, the disputed properties are registered in the name of the Company, whose shareholders are outsiders. Contrary to the allegations by the Applicant, the Company cannot be said to be a family Company, because the parties herein are not legally shareholders. As such they have no entitlement to company assets, profits, or decision- making powers under the *Companies Act* 2015.
18. In *N N N v S N M* [2017] eKLR, the court (L.A. Achode J, as she then was), held that;

“

46. Shares owned by the Respondent in the company cannot be construed as matrimonial property and be distributed under the principles set out in the Matrimonial Properties Act. The Applicant has not proved that she contributed in monetary or non-monetary ways towards acquisition or development of the property, or that she bought any shares in the company. This court therefore has no jurisdiction to grant the reliefs sought by the Applicant with respect to Plot No. [Particulars Withheld] and the shares in [Particulars Withheld] Limited which manages the hostels in the said Plot.
47. It is trite law that a company is a separate legal person/entity from its shareholders and directors as was espoused in the English case of *Salomon v Salomon* (1887) AC 22. From the foregoing I find that the said Property in L.R No. [Particulars Withheld] managed by [Particulars Withheld] Limited



belongs to the company and therefore the Applicant can only make a claim to the company shares under the provisions of the Company Act.”

19. I find that the disputed properties are not matrimonial properties within the meaning of section 6 of the *Matrimonial Property Act*, and are thus unavailable for distribution.
20. The upshot from the foregoing analysis is that the Originating Summons dated 30/1/2020 does not have merit and it is accordingly dismissed with costs to the Respondent.

DATED AND DELIVERED THIS 17th DAY OF JUNE, 2025.

S. M. GITHINJI

JUDGE

Appearances:

1. Kado for the Respondent.
2. Ms. Murugi for the Applicant (absent).

