



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT SIIAYA

CIVIL CASE (ORIGINATING SUMMONS) NO. E009 OF 2021

ISSUE: DIVISION OF MATRIMONIAL PROPERTY

CON.....PETITIONER/PLAINTIFF

VERSUS

NMS.....RESPONDENT/DEFENDANT

JUDGMENT

1. As I determine this case which was initiated less than six months ago on 20th September, 2021, I must mention that if all parties to suits were to cooperate with the courts in case management the way the parties and their advocates did in this case, we would not be having case back log and delays and even if there was such case backlog and delay in the determination of cases, it would not be excessive as to cause pain to the litigants and the public irked over delayed justice. Article 159 of the Constitution commands the courts and tribunals in their exercise of judicial authority to be guided by the following principles, among others:

- (a) justice shall be done to all, irrespective of status;
- (b) justice shall not be delayed;
- (c) ...

2. It was in the spirit of these constitutional provisions that this court implored the parties to this case and their respective advocates who agreed to forego the prosecution of the interlocutory application dated 7th October 2021 which had been filed by the Respondent though not yet paid for, in favour of a merit determination of the suit. Justice delayed is indeed justice denied. Notwithstanding the final verdict in this suit, which either party is entitled to accept or challenge on appeal, I truly believe that justice has been served to the parties who, on the part of the petitioner, approached the court after a considerable delay. I say delay because the marriage between the parties hereto was dissolved in March 2010 and it took the petitioner 11 years down the line to initiate proceedings under the Matrimonial Property Act, 2013 for determination of his rights over what he considers to be matrimonial property.

3. Vide Originating Summons dated 8.9.2021, the Petitioner/Applicant CON seeks the distribution of matrimonial property and the following specific orders:

a) *That it be declared that all those properties known as:*

i. *Title No. Uholo/Ugunja/xxxx;*

ii. *Title No. Uholo/Ugunja/xxxx and*

iii. *Title No. Uholo/Ugunja/xxxx together with all developments thereon and registered in the name NMS the respondent herein are matrimonial properties held by the said respondent for herself and in trust for the petitioner.*

b) *That it be declared that Title No. Uholo/Ugunja/xxxx is owned by the petitioner at 100%.*

c) *That it be declared that Titles Nos. Uholo/Ugunja/xxxx and 1726 are jointly owned by the Petitioner and respondent in equal shares.*

d) *That the aforesaid properties be valued by a joint valuer to be agreed upon by the parties failing which a valuer appointed by this honourable court and the same be shared in the manner declared.*

e) *That there be liberty to apply.*

f) *That costs of this suit be provided for.*

4. The application is supported by the petitioner's affidavit sworn on the 8.9.2021.

The Petitioner's Case

5. It is the petitioner's case that he got married to the respondent sometime in the year 1999 and that they divorced in 2008 by which time, the marriage had been blessed with one issue named AN

6. The petitioner avers that he bought the property known as Uholo/Ugunja/xxxx measuring 0.04Ha in September 1995 from one Alex Demba Ondinyi, long before the celebration of their marriage.

7. It was his case that after marrying the respondent, he transferred the said parcel to her for no consideration to enable her pledge it as security for a bank loan from Kenya Commercial Bank Limited (KCB). He further stated that he was willing to take over the loan so as to have the title to the said land discharged and be transferred to him.

8. The petitioner further stated that all developments on the aforementioned property were done by him with no contributions from the respondent.

9. It is the petitioner's case that after marrying the respondent, he acquired two more properties, specifically, Uholo/Ugunja/xxxx and Uholo/Ugunja/xxxx which he had registered in the respondent's name though the respondent did not make any contributions to the purchase or improvements thereon.

10. The petitioner also averred that the registration of the suit properties in the name of the respondent was done in trust and good faith.

The Respondent's Case

11. Opposing the originating Summons, the respondent filed Grounds of Opposition as well as a replying affidavit all dated 7.10.2021. The grounds of opposition are:

a) *That the application as drawn was ex facie bad in law, misconceived, incompetent, oppressive, mischievous, contra-statute and an abuse of the court process. The respondent will therefore urge the Honourable Court to dismiss the same in limine at the earliest opportunity.*

b) *That the petitioner has filed another case in Siaya Magistrates Court being Siaya PM ELC No. E0XX/2021 in which he has sought similar orders as in the current application.*

c) *That in the said case E0XX/2021 the petitioner has sought similar injunctive reliefs as in the current application and as such is guilty of sub judice.*

d) *That the properties listed by the petitioner are neither matrimonial properties within the meaning of the Matrimonial Property Act No. 49 of 2013 nor trust properties as alleged.*

e) *That the petitioner had admitted that since 1999 the respondent has been using the said properties as the sole and lawful owner without any interference from any third party and that in 2004 she secured a loan from one of the local banks using the said properties as security.*

f) *That the petitioner has admitted that the suit properties have been registered in the name of the respondent dating back to the year 1999 and as such it is questionable why he is seeking injunctive reliefs 22 years later.*

g) *That the petitioner seeks to use the court process as a conduit to enable himself proceed with trespass thereon and illegal leasing of the suit properties.*

12. In her replying affidavit, the respondent deposes that she got married to the petitioner on 17.2.2000 at the Registrar's Office in Mombasa and not in 1999 as alleged by the petitioner and that at the time of the said marriage, she had been a professional banker with several years of experience.

13. The respondent further deposes that the petitioner had filed a case in Siaya Magistrate's Court vide ELC No. E0XX/2021 in which he sought cancellation of her name as owner of Ugunja/xxxx and further that the petitioner alleged that he transferred the property to secure family eventualities.

14. It was her defence that it was evident from the petitioner's own averments that she acquired the property Uholo/Ugunja/xxxx on 26.5.1999 prior to her marriage to the petitioner and further that the properties listed by the petitioner were neither matrimonial properties nor trust properties as alleged.

15. She further averred that she solely acquired properties known as Uholo/Ugunja/xxxx and Uholo/Ugunja/xxxx without any input of the petitioner and further that she used the properties to secure a loan in 2004 when there was no claim by the petitioner.

16. The respondent averred that the petitioner had since encroached on Uholo/Ugunja/xxxx and was putting up structures and sub-leasing the same. She further stated that it was suspicious as to why the petitioner had waited 13 years since the dissolution of their marriage to institute the instant proceedings.

17. The respondent further averred that the petitioner had not filed a single piece of evidence in support of his claim and that it would be unfair to have her properties shared as she was still taking care of her issue with the petitioner.

18. The respondent filed a supplementary affidavit dated 5.11.2021 on the 23.11.2021 in response to the witness statements filed by the petitioner stating that the witness statements were false, misleading and manufactured to lend credence to the petitioner's claims.

19. She further deposed that only two witnesses had mentioned dates of alleged negotiations for properties Uholo/Ugunja/xxxx and Uholo/Ugunja/xxxx which contradicted the contents of the handwritten agreement dated 10.3.2021 attached to the petitioner's supplementary affidavit. She reiterated that she was the sole owner of the properties listed by the petitioner in his originating summons.

20. It was her defence that she acquired Uholo/Ugunja/xxxx in the year 1999 when she and the petitioner were registered as joint owners on 10.9.1999 from Lazarus Awita Odera and further that she acquired Uholo/Ugunja/xxxx in June 2002 from Cleophas Awuor Odera contrary to the allegations by Charles Ongas Awour, Margaret Awuor and Peter Opondo.

21. She further contended that the petitioner had been harassing, intimidating and instilling fear in any member of Nyabeda village who wished to testify in her favour.

22. The respondent further swore a supplementary affidavit on the 19.11.2021, which affidavit was filed on the 23.11.2021 in which she averred that she did not apply for a loan in 1999 as alleged by the petitioner but in May 2004.

The Petitioner's Oral Testimony

23. The Petitioner testified as PW1. He adopted his witness statement dated 16/11/2021 and filed on the same date. It was his testimony that the respondent was his wife with whom they had divorced. He testified that he met the respondent in Nairobi in 1999 and travelled with her to Mombasa where they cohabited as a couple before registering the marriage at the Civil Registry on the 17.2.2000.

24. He further stated that they were blessed with an issue on the 1.11.2000, a clear testimony that their relationship began long before they formalized their marriage. The petitioner further stated that he bought land parcel No. Uholo/Ugunja/xxxx from Mr. Alex Demba Ondinyi and that he was issued with a title deed on 19.9.1995 long before marrying the respondent in 1999.

25. It was his testimony that once they started cohabiting as a couple, he transferred parcel number Uholo/Ugunja/xxxx to the respondent on 26.5.1999 to enable her pledge the property as collateral for a bank loan she had applied for which loan was eventually advanced in the year 2004.

26. He testified that the transfer was not for any consideration at all but it was understood that she would hold it in trust for the family. He admitted that he had leased the land to small scale traders who had erected temporary structures on it

27. It was his evidence that in September 1999, he bought parcel number Uholo/Ugunja/xxxx from Lazarus Awita Odera and the same was registered in the joint names of the parties herein. He further stated that in 1997, he had a court case in Mombasa HC Misc. Application No. xx of 1997 in which the advocates therein threatened to trace and register inhibitions on his properties so he decided to transfer his interest in parcel Uholo/Ugunja/xxxx to the respondent as a precaution and in trust. It was his testimony that on 10.5.2004, the respondent pledged parcel No. Uholo/Ugunja/xxxx as security for a bank loan.

28. The petitioner stated that he bought title number Uholo/Ugunja/xxxx from Cleophas Awour Odera, a transaction that started in December 2000 and had the transfer effected on 28.6.2002 in the name of the respondent as a precaution against the inhibition orders earlier cited.

29. He reiterated that the registration of the properties in the respondent's name was in good faith and trust and as such they did not belong to her absolutely. He further stated that parcel No. Uholo/Ugunja/xxxx was acquired before marriage and remained undeveloped.

30. In cross-examination by counsel for the Respondent, the petitioner stated that he bought some properties before marriage in 2000 specifically being Uholo/Ugunja/xxxx which he bought on 19.9.1995 and transferred to the Respondent on 26.5.1999 before registration of their marriage.

31. He further stated that he also bought Uholo/Ugunja/xxxx in 1999 and registered it in the joint names of himself and the respondent on 10.9.1999 before transferring ownership to the Respondent on 3.1.2001. It was his testimony that he must have signed a transfer form though he stated that he gave no reasons for transfer except for her to hold it in trust. It was his testimony that he did not have an agreement showing the purchase from Lazarus Awita but had witnesses specifically Hellen Awita, Margaret Awuor, Peter Opondo and Charles Ongas.

32. It was his testimony in cross-examination that in 2004, the said property was later charged and that he did not object to the charge being registered on it. He stated that there was a loan request in 1999 though he did not have a copy of the said loan request.

33. It was his testimony that parcel No. Uholo/Ugunja/xxxx was registered in the Respondent's name on 28.7.2002. He stated that the transferor was Mr. Cleophas Awuor Odera at Kshs. 215,000 though he had no evidence to that effect and further that the consideration indicated was Kshs. 35,000. He stated that this was not the purchase price. He stated that only the Respondent was an identified owner of the said property.

34. The petitioner further testified in cross-examination that he transferred some properties to the Respondent not because he was

running away from a court order but so as to save the properties as the case was dismissed in his favour.

35. It was his testimony that when he separated from the respondent in 2008, the property was already charged with the Bank so he could not transfer it back to himself. He further stated that in Siaya PM E0XX/2021, he swore an affidavit saying his transferring of the property was due to family eventualities and further for trust and to protect it from Tindika Advocates who threatened to attach his property. He stated that he did not want the properties to be declared as matrimonial properties.

36. In re-examination by his counsel, the petitioner stated that he started cohabiting with the respondent in September 1999 prior to having a civil marriage on the 17.2.2000. He stated that the green card for Parcel No. Uholo/Ugunja/xxxx was transferred to him on 19/9/1995 and the title Deed issued with the consideration indicated as Kshs. 15,000 on 26.5.1999. He reiterated that he transferred the parcel to the respondent at no consideration.

37. The petitioner reiterated that he had the green card for Parcel No. Uholo/Ugunja/ xxxx and that there was an agreement for sale but he did not have it. He stated that the seller was Lazarus Awita and that he was the one who paid the purchase price but caused it to be transferred to the respondent on the 3.1.2001 as a result of the issues he had with Tindika Advocates. It was his testimony that there was no consideration for the transfer as it was a gift as evidenced in the column for consideration.

38. Regarding Parcel No. Uholo/Ugunja/xxxx, the petitioner stated that he had an agreement signed by Awuor the seller and his mother who bought the land on his behalf. He stated that the respondent did not sign on that agreement and that the last entry on the agreement was on the 12.2.2001 indicating that he paid Kshs. 41500 with a balance of Kshs. 90,000 to be paid later which he did.

39. **PW2 Charles Ongasi Awour** took oath and adopted his signed witness statement dated 25.10.2021 and filed on the 3.12.2021 in which he stated that he was the surviving cousin of the late Lazaro Awitta and Awour Awita Odero as well as the former sub-chief of Ugunja sub-location.

40. He stated that he was involved in negotiations leading to the sub-division and subsequent sale of parts of the deceased's plots and that he witnessed the deceased receive cash payment of Kshs. 240,000 from the petitioner in early 2001 in the presence of Hellen Awita, the deceased's wife and Peter Opondo.

41. PW2 further stated that he was present when Cleophas Awour received the initial payment of Kshs. 120,000 from the petitioner for sale of part of his land to the petitioner and that he was aware that subsequent payments were received on different occasions by Mr. Awour and his wife Margaret Achieng.

42. It was his testimony that he was aware that the plots were being bought by the petitioner for purposes of building a homestead and further that at the commencement of construction, the petitioner introduced the respondent as his wife.

43. In cross-examination, PW2 stated that the statement he had adopted was not true. It was his testimony that when he wrote the statement he had not traced the agreement so there might be differences. He stated that the petitioner was from his village and that he married the respondent around 1999 and 2000.

44. He testified that prior to that marriage, he had seen the respondent when she visited Nairobi as her sister was married to a son of his cousin - FOO. He stated that he could not remember the respondent visiting them prior to 1999.

45. He admitted that he was the one who wrote the agreement, PEx9 by hand and that the property referred to in the said agreement was not stated as survey was to be done to get the number of the Plot. He stated that he could not remember the original plot and that when he was writing the agreement, the petitioner and his mother were present. He stated further that he could not see the petitioner's signature in the agreement as his mother Lucia signed on his behalf. He further stated that Margaret Owuor signed on the agreement.

46. PW2 admitted that the people he had named in his statement were not in the agreement. He stated that on 3.1.2001, following the first agreement, the petitioner brought additional money, Kshs. 33,500. He stated that the petitioner was present though his signature was not on the agreement but that the petitioner's mother's (Lucia) signature was present on the agreement.

47. He further stated that on 12.2.2001, the petitioner paid an additional Kshs. 41,000 and that he signed under the signature of

Margaret Achieng. It was his testimony that the purchase price was Kshs. 215,000. He stated that the agreement was volume II was written as it was many years back. He stated that he was not aware that property No. Uholo/Ugunja/1726 was registered in the name of the respondent and neither was he aware of what transpired between the petitioner and the respondent.

48. **PW3 MAA** testified that the petitioner was her brother in-law's son and that her late husband, Cleophas Owuor sold land to the petitioner on the 10.3.2000 for a purchase price of over two hundred thousand though she could not recall the exact amount.

49. It was her testimony that the money was paid in instalments with the first payment being of Kshs. 50,000 and the balance also paid in instalments. She testified that she also knew the respondent who was married to the petitioner after the petitioner had bought the land on which they wanted to construct a house. She further testified that at times her husband could visit the petitioner and the respondent and he received money for the purchase of the said land from both of them. She reiterated that she was present when the petitioner and her –PW3's husband agreed on the sale of the land and the first instalment paid.

50. In her statement filed on the 3.12.2021, PW3 stated that the respondent was introduced to them at the commencement of construction of the petitioner's house before which she was a stranger to the village and did not participate in the negotiations for the purchase of the plot. She further testified that the petitioner made it clear that he was purchasing the plot in the name of the respondent and that similar purchase agreement had been made by the petitioner when he purchased the adjacent plot from PW3's late brother-in-law, Lazaro Awita.

51. In cross-examination, PW3 stated that the petitioner and the respondent lived as man and wife though she could not recall when they got married and further added that the respondent's sister was also married in her family.

52. PW3 further stated that her husband Cleophas used to go and get money from the petitioner but PW3 was not present when he received those instalments. She further stated that there was an agreement signed between the petitioner and Cleophas which she thumb printed on.

53. It was her testimony that the petitioner was also present and that he had left his wife in Mombasa and that they both signed on the agreement although she could not tell if the petitioner signed as she, herself signed only once when the petitioner paid Kshs. 50,000.

54. She further stated that she was not present when the petitioner transferred the title but that the respondent went with the petitioner to the Chief's office where she could not ascertain what transpired as she did not accompany them. It was her testimony that she was aware that her husband agreed to sell the land to the petitioner and that she went to the Lands office.

55. **PW4 Hellen Akong'o Awita** testified that she was the wife to the deceased Lazaro Awita who died over 20 years ago. It was her testimony that she knew the petitioner who had bought her land at a time when her husband was sick though her son, one Vitalis Obango now deceased, was present.

56. She testified that in the agreement, the purchase price was Kshs. 240,000 which money the petitioner paid to one Peter whom he had gone with who then gave it to her son Vitalis who gave it to her brother in-law Michael Ongasi who gave it to the Chief, Charles Ongasi who counted the money in her presence and view then gave it to her husband. She testified that she had never seen or met the respondent.

57. PW4 further stated that she could not remember the Plot Number but knew the land in question whose number she had recorded in her house on a piece of paper. She stated that the land was near where she lived, specifically 3 homesteads away from her house. She further testified that the petitioner started constructing a brick house on the land, a pit latrine and a dog house and left the house incomplete.

58. In her written statement dated 22.9.2021 and filed on the 3.12.2021 she stated that the respondent was introduced to them at the commencement of the construction as the petitioner's wife and that the petitioner made it clear that the plot be registered in the respondent's name.

59. In cross-examination, PW4 stated that she could not remember the title number of the land as she was now old. She denied knowing the respondent and stated that she witnessed the agreement for the sale of land which she used to plough and that she also

witnessed the petitioner paying for the land.

60. It was her testimony that the respondent had never gone to the land since it was purchased by the petitioner and that she was not aware that the land had been registered in the respondent's name after its purchase.

61. **PW5 Peter Odhiambo Opondo** adopted on oath the statement he signed on the 25.10.2021 as his evidence in chief. It was his testimony that he was involved in the negotiations leading up to the sub-division and subsequent sale of parts of the late Mr. Lazaro and Awour's plots in December 2000.

62. PW5 stated that he was tasked by the petitioner to look for viable plots within their village where the petitioner would construct his homestead after which PW5 was involved in the fencing of the homestead and putting up of structures thereon. He further stated that he witnessed Mr. Lazaro Awita receiving cash payments of Kshs. 240,000 from the petitioner in the presence of Hellen Awita

63. He further stated that he was also present when Cleophas Awour received the initial Kshs. 120,000 for sale of part of his land from the petitioner and that he was also aware that Mr. Awour and his wife also received subsequent payments of the balance.

64. PW5 stated that he was the one who sourced suppliers of building materials, engaged works and supervised payment of workers on behalf of the petitioner and that he was aware that the petitioner was buying the plots to build his homestead. He further stated that the petitioner introduced the respondent to him as his wife.

65. In cross-examination, PW5 stated that the petitioner lived in Mombasa so he went home and asked PW5 to look for land which he could buy. It was his testimony that he approached Lazaro who accepted to sell land to the petitioner Charles sometime in the late 1999 to 2000.

66. He further testified in cross-examination that there was subdivision to be carried out and that the petitioner bought Lazaro's land then later bought land from Cleophas. He stated that the petitioner bought Lazaro's land at Kshs. 240,000 and at Kshs. 120,000 from Cleophas around the year 2000 in the presence of the area Assistant Chief.

67. He further testified that it was long since the agreements were written so he was not sure if the petitioner signed the agreement but that he, the petitioner's mother and Margaret signed the agreement. He stated that he even fenced the land for Charles but did not follow up on survey and transfer of the same.

68. PW5 testified that the respondent was not present when the petitioner bought the two parcels of land and that he only saw her during construction on the land when the petitioner introduced her to them. He further stated that the petitioner used to pay Cleophas by instalments and that he could go through the Assistant Chief.

69. He stated that he could not see his signature on PEx9 and stated that it was not true that he did not know anything concerning the land. He further stated that he did not know how the pieces of land bought by the petitioner got registered in the respondent's name.

The Respondent's Oral Testimony

70. The respondent took an oath online and testified, adopting the replying affidavit sworn on 8/10/2021, supplementary affidavit sworn on 5/11/2021 and further supplementary affidavit sworn on 19/11/2021 as her evidence in chief. She testified virtually that the petitioner was her former husband having been married on 17.2.2000. It was her testimony that prior to that, she knew the petitioner who was the best man to her sister's bridegroom in 1987.

71. The respondent denied cohabiting with the petitioner prior to 17.2.2000. She reiterated that property in Ugunja being No. Uholo/Ugunja xxxx was registered in her name and that she acquired it in May 1999 from the Petitioner at a time when she was not his spouse at that time. She stated that the same applied to Uholo/Ugunja/xxxx which she bought and registered in their joint names and they agreed that it would revert to her. She testified that she bought the property Uholo/Ugunja/xxxx and registered it in her name.

72. It was her testimony that she had not produced agreements because the Petitioner took them after they parted ways whereas the

title deeds were in the bank.

73. In cross-examination, the respondent testified that she was a banker by profession though she had not tendered any evidence in support thereof. She stated that she started working as a banker in 1994 as a trainee when she was 20 years old having been born in May 1974 and that she was 26 years old in 2000. She stated that she had since stopped working as a banker and now farmed and offered consultancy services.

74. It was her testimony that she was aware that Siaya PMCC ELC No. xx/2021 was withdrawn on the 16.12.2021 with costs in her favour. She further testified that she got married on 17.2.2000 at the Registrar's Office and that they had courted before they got married for about 3 - 4 months starting from around December 1999. She reiterated that she never lived with the petitioner until February 2000.

75. The respondent testified that her marriage was blessed with a son AN whose name she changed when he turned 18 years as his father, the petitioner, refused to provide for him and so the child asked her to give him other names. She admitted that she never sought the petitioner's consent to change the child's name because the petitioner was never available. The name was changed after divorce.

76. It was her testimony that Uholo/Ugunja/xxxx was initially owned by the petitioner but was transferred to her in May 1999. She further stated that though she had not deposed that she paid the petitioner for the said plot, she paid him about Kshs. 300,000. She testified that the property was not developed when it was transferred to her but the petitioner had leased it out to people who construct kiosks and from whom he collected money.

77. The respondent testified that she had an agreement for sale with the petitioner which she could not produce as the petitioner burnt her clothes and documents, and that she had stated this in the divorce case. She denied that the petitioner transferred land to her to facilitate her taking a loan and stated that the loan was obtained in 2004, which loan had not been fully repaid as there were pending charges.

78. It was her testimony that she had not refused to produce a complete loan account statement but that she had requested the Bank who informed her that the said documents were archived.

79. The respondent stated that the petitioner wanted to take her property after wasting his life. It was her testimony that she knew Hellen Akong'o Awita, her sister's mother in law and wife to Lazarus Awita from whom she had bought property No. Uholo/Ugunja/xxxx. It was her testimony that she could not remember the exact purchase price but it was between Sh. 200,000 to Kshs. 250,000.

80. The respondent denied that the Petitioner was the one who purchased the property from Mr. Lazarus Awita. She stated that her sister Redempta was married in that area and that she interacted with the family of her sister.

81. It was her testimony that both her sister and her husband were aware when she bought land from Lazarus Awita though she did not call them as witnesses as the petitioner had threatened them with a panga. She further testified that she knew Mr. Charles Ongas who testified on the sale of property Uholo/Ugunja/xxxx which was also charged for the same loan as Uholo/Ugunja/xxxx.

82. The respondent testified that she purchased property No. Uholo/Ugunja/xxxx from the brother of Lazaro who was also the brother of her father in-law. She testified that she knew Margaret Awuor, the widow to Cleophas Awuor the late and that it was not true that it was the petitioner who bought the property.

83. She testified that property No. Uholo/Ugunja/xxxx was not charged and that she held the title though the petitioner remained with original title. She denied that Uholo/Ugunja/xxxx and xxxx were discharged from the Bank or that she had fully repaid the loans as the two titles were still held by KCB.

84. The respondent stated that she did not know anything about the case giving rise to the prohibitory Order.

85. In re-examination, the respondent stated that her son's name is AMTN though not captured in the Birth Certificate and that his identity Card reads ATM She stated that the Petitioner never provided for the child before and after the divorce. She stated that she

first met the Petitioner in the 80's when he was the best man for her sister's husband. She stated that the petitioner frequented her sister's house.

86. The respondent stated that she had not produced any agreements in respect of title No. Uholo/Ugunja/xxxx because the Petitioner oversaw the conveyance and remained with the documents and that although she tried getting them from Siaya Land Registry, she was told that the Registry moved to Ukwala and that this applied to all the other properties.

87. It was her testimony in re-examination that she bought title No. xxxx from Cleophas Awuor and that the agreement produced by the Chief was not true, as it referred to a different plot. She stated that she signed an agreement in respect of the plot No. xxxx and in respect of plot xxxx. She further stated that she paid purchase price to the petitioner for Plot No. xxxx.

88. It was her testimony that for Plot No. xxxx, she paid the purchase price to Mr. Lazaro Awita of about Kshs. 300,000, for Plot No. xxxx she paid Sh. 200,000 - 300,000 to Mr. Cleophas. She further stated that there has been no complaint from those families on how she acquired those properties.

89. The respondent further stated that her sister and her husband are alive and that she had deposed in her further affidavit that the Petitioner had intimidated and threatened them not to testify.

90. She testified that she knew Margaret and Hellen before she married the petitioner as her brother-in-law was the son of Lazaro Awita and Cleophas was the brother to Lazaro whereas Chief Ongasi was their cousin.

91. The respondent stated in cross examination that she did not know anything about the prohibition order on the title of the land in Kwale and that she attached the green card for the land in Kwale to indicate that the Petitioner had other parcels of land in his name and the allegation that he was running away from enforcement of court orders against him was therefore not true.

The Petitioner's Submissions

92. It was submitted that the petitioner had previously owned title number Uholo/Ugunja/1019 absolutely and Uholo/Ugunja/xxxx jointly with the respondent before transferring the same to the respondent on the 26.5.1999 and 3.1.2001 respectively as was evident from the coherent and consistent testimonies of the petitioner's witnesses and therefore the court ought to uphold as such.

93. The petitioner submitted that the respondent did not tender any proof of payment for the properties whether by way of account or witnesses to the fact and further that the respondent deliberately withheld crucial evidence from court on the entire statement of the loan.

94. It was submitted that the transfer by the petitioner of Uholo/Ugunja/xxxx and Uholo/Ugunja/xxxx and the registration of Uholo/Ugunja/xxxx in favour of the respondent was made in good faith and trust and that the transfers did not confer absolute ownership of the properties to the respondent but created a resulting trust.

95. The petitioner further submitted that all the suit properties were registered under the Registered Land Act Cap 300 which was subsequently repealed by section 109 of the Land Registration Act No. 3 of 2012 and therefore it follows that the applicable law is the Registered Land Act (Repealed).

96. As to whether the Matrimonial Property Act No. 49 of 2013 was applicable to this dispute, it was submitted that the repealed English Married Women's Property Act was the one applicable as was held in the Court of Appeal decision of **PNN v ZWN [2017] eKLR**. The petitioner further submitted that although the dispute was filed long after the promulgation of the Constitution of Kenya, 2010 and the enactment of the Matrimonial Property Act, 2013, the suit properties were acquired during coverture of a marriage that was dissolved on 5.5.2010 long before the enactment of the Matrimonial Property Act 2013.

97. Concerning the respective shares of the matrimonial parties to be had by both parties, the petitioner relied on the Court of Appeal decision in the case of **Peter Mburu Echaria v Priscilla Njeri Echaria [2007] eKLR** where it was held inter alia that *an applicant must show to the court that they made a direct financial contribution or an indirect financial contribution towards the acquisition and development of the claimed property* which holding was reiterated by the Court of Appeal in the case of **Civil Appeal No. 179 of 2009 Francis Njoroge v Virginia Wanjiku Njoroge**.

98. Guided by the aforesaid principles, the petitioner submitted that title number Uholo/Ugunja/1019 should be found to be 100% equitably held by him and in the alternative the Court should find that the respondent fully exhausted whatever legal interest she had over the property as she used it to secure a loan which she exclusively benefited from.

99. As for title No. Uholo/Ugunja/xxxx and xxxx, It was submitted that the petitioner held 50% beneficial share in this property as it was registered initially in their joint names prior to the petitioner transferring it to the respondent.

100. As to whether the provisions of the Constitution can be applied retrospectively in effect and thus applicable, the petitioner relied on the case of *PNN (supra)* where the court faced with a similar question relied on section 7 (1) of the 6th Schedule of the Constitution which provides that *all law in force immediately before the effective date continued in force and was to be construed with the alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with the Constitution.*

101. The petitioner further relied on the Supreme Court case of **Samuel Kamau Macharia and Anor v Kenya Commercial Bank Ltd & 2 Others [2012] eKLR** where the Court acknowledging that the Constitution applies retrospectively as it seeks to re-engineer the social order, the court proceeded to hold *inter alia* that where the words used in a particular provision are forward looking and do not contain a whiff of retrospectivity, the court ought not to import the Constitution so as to prevent the divesting of an individual's legitimate right that occurred before the commencement of the Constitution.

102. As to whether the petitioner's claim was time barred it was submitted that the suit properties were subject of matrimonial property and thus the interest as well as the distribution of the said properties can only be adjudicated upon the dissolution of the marriage and not during its subsistence. Reliance was placed on the case of **EJT v JKL [2019] eKLR**.

103. The petitioner submitted that he proved his case to the required standard and that the testimonies given in his favour were uncontroverted and consistent despite the witnesses' memories.

104. It was further submitted that the petitioner filed and served a notice to produce dated 3.11.2021 which the respondent vide her testimony confirmed to have failed to produce and thus it was ill conceived of the respondent to deny this in their submissions.

The Respondent's Submissions

105. The respondent submitted that the petitioner's claim was time barred as the properties were registered between the years 1999 and 2000 which is over 20 years and further that the Petitioner did not explain why it took him so much time before commencing the current proceedings. Reliance was placed on the Court of Appeal decision in **CWM v JPM [2017] eKLR** where the Court rejected a claim for matrimonial property filed after 30years.

106. It was submitted that the instant case having been filed in the year 2021, several years after the enactment of the Constitution, fell within the purview of Matrimonial Property Act, 2013. Reliance was placed on the case of **MWG v TKG [2016] eKLR** where the court when considering a dispute involving properties acquired between 1982 and 2010 and the suit filed about six (6) months after enactment of the Act found that the Matrimonial Property Act, 2013 was applicable. Further reliance was placed on the case of **P AW-M v CMA W-M [2016] eKLR** and **TNM v BMK [2020] eKLR** where the court applied the provisions of the Matrimonial Property Act, to a marriage celebrated in 1950s and properties acquired in 1960s.

107. It was further submitted that the Matrimonial Property Act, 2013 at Section 19 also provides for cessation of application of the **Married Women's Property Act, 1882**. The respondent further submitted that this case was distinguishable from the decision in *PNN (supra)* where the Originating summons were filed in 2004 and judgment in the High Court delivered in 2012 prior to the enactment of the Matrimonial Property Act, 2013.

108. As to whether the suit properties were matrimonial properties, the respondent submitted that both parties admitted that all the suit properties were registered in her name. She further stated that Title No. Uholo/Ugunja/xxxx was acquired and registered in her name on 26.05.1999 several months prior to the marriage celebrated on 17.02.2000 and that Title No. Uholo/Ugunja/ xxxx was registered in the joint names of the parties herein on 10.09.1999 prior to their marriage and that later on 03.01.2001 the Petitioner transferred his share to the Respondent whereas Title No. Uholo/Ugunja/xxxx was acquired by the Respondent and registered in her name on 28.06.2002.

109. It was her submission that that their matrimonial home was not established in any of these properties and that the plots remained undeveloped save for kiosks on Title No. Uholo/Ugunja/xxxx constructed by agents of the Petitioner and as such it was evident that the suit properties did not qualify as matrimonial properties within the meaning of section 6 of the Act.

110. Reliance was placed on the case of **TMW v FMC [2018] eKLR** where it was held *inter alia* that ***for property to qualify as matrimonial property, it ought to have been acquired during the subsistence of the marriage between the parties unless otherwise agreed between them that such property would not form part of matrimonial property.***

111. It was submitted that the Petitioner's allegation that the Respondent held the suit properties in trust for both herself and the Petitioner excluded the said properties from being considered matrimonial property as provided for in Section 6(2) of the Act which excludes trust properties from being considered as matrimonial property.

112. The respondent submitted that regarding property Title No. Uholo/Ugunja/xxxx, she acquired the same during the pendency of the marriage and that the Petitioner did not contribute towards the acquisition thereof thus the burden was upon the Petitioner to prove that the property falls within section 14 of the Act.

113. As to whether the petitioner proved his case to the standard required, it was submitted that in as much as the petitioner called 4 witnesses to support the allegations of his interest in the suit properties, the Petitioner failed to prove that the suit properties were matrimonial and further that he led no evidence to show the trust alleged.

114. It was submitted that the Petitioner did not make any attempt to prove contribution as envisaged in section 2 of the Matrimonial Property Act whereas the Respondent tendered evidence to show that she did most of the domestic work and took care of the issue of the marriage single handily and further that the burden was upon the Petitioner to prove that he contributed in the acquisition of the suit properties which are all registered in the name of the Respondent as was held by the court in the case of **AWN v FMN [2018] eKLR**.

115. It was further submitted that that the Petitioner had not only failed to discharge the onus of proof in this matter but went ahead to offer contradicting positions in his own documents and testimony as was evident in an Affidavit of the Petitioner in Siaya Principal Magistrate's Court Land Case No. E0XX of 2021 and annexed to the respondent's replying affidavit where the petitioner states that he *transferred the suit property to the Respondent on 26.05.1999 to hold the same in trust for me in case of eventualities*, whereas in his witness statement dated 16/11/2021 at paragraph 14 the Petitioner states that the *properties were registered in the Respondent's name as a precaution against inhibition orders by Mr. Tindika Advocate*.

116. The respondent submitted that the petitioner's Exhibit 7(a) to (g) were not accompanied by a certificate under section 106B (4) of the Evidence Act and the same were thus inadmissible and ought to be excluded. Reliance was placed on the case of **Stegma Enterprises Limited v Viktor Maina Ngunjiri [2016] eKLR**.

117. It was submitted that the reliefs sought in the Originating Summons dated 08/09/2021 are not available to the Petitioner as he had failed to prove that the suit properties are matrimonial properties and or that he contributed to the acquisition of the same as and when the Respondent acquired them.

Analysis & Determination

118. I have considered the pleadings herein by both the petitioner and the respondent as well as the witness statements, necessary affidavits, viva voce evidence and submissions as filed. I have also considered the exhibits filed and produced in evidence and submissions and authorities cited.

119. From the material placed before me it is clear that the parties herein were married having solemnized their union in a civil marriage at the Registrar's Office in Mombasa on the 17.2.2000 before having it fully dissolved on the 2.3.2010 before M.K.Ibrahim J(as he then was).

120. From the Originating Summon, I note that the properties sought to be shared are as follows:

a) *Title No. Uholo/Ugunja/xxxx*

b) Title No. Uholo/Ugunja/xxxx

c) Title No. Uholo/Ugunja/xxxx

121. Taking all the above into consideration, it is my opinion that this court is to determine the following issues:

- i. **Whether the instant suit is time barred**
- ii. **Whether the doctrine of sub-judice applies**
- iii. **Whether the Matrimonial Property Act, 2013 is applicable in the instant suit**
- iv. **Whether the suit properties are Matrimonial Property or trust property**
- v. **Whether the Petitioner's Exhibits 7(a) – (g) should be expunged**
- vi. **what orders should this court make"**

On Whether the instant suit is time barred

122. It was submitted by the respondent that the petitioner's claim was time barred as the properties were registered between the years 1999 and 2000 which is over 20 years and further that the Petitioner did not explain why it took him so much time before commencing the current proceedings.

123. In response, the petitioner submitted that the suit properties were subject of matrimonial property and thus the interest as well as the distribution of the said properties can only be adjudicated upon the dissolution of the marriage and not during its subsistence.

124. I have considered the arguments herein. It is not in dispute that the marriage herein was dissolved vide a judgement delivered on the 2.3.2010 in **Nerea Michael Said v Charles Ochieng Ndiga [2010] eKLR**. Further it is not in dispute that 11 years has elapsed prior to the petitioner instituting these proceedings, which delay is inordinate as the same has not been explained by the petitioner.

125. However, a claim under the Matrimonial Properties Act is not particularly defined as a civil claim. This is a claim which in the instant case affects land which is an immovable property being claimed as matrimonial property in my view, falls within the ambit of Section 7 of the Limitation of Actions Act that provides that *an action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person*. See the Court of Appeal in **CWM v JPM [2017] e KLR**. The suit was filed within 12 years after dissolution of the marriage on 2.3.2010. The cause of action in a claim for division of matrimonial properties arises only after such dissolution of marriage between the parties. Accordingly, the petitioner was still in time within which to institute these proceedings. I therefore find that these proceedings are not statute barred.

On Whether the instant suit was sub-judice Siaya PM ELC No. E0XX/2021

126. The respondent in her Grounds of Opposition dated 7.10.2021 contended that the instant suit was sub-judice Siaya PM ELC No. E0XX/2021. The doctrine of res sub-judice prevents a court from proceeding with the trial of any suit in which the matter in issue is directly and substantially the same with the previously instituted suit between the same parties pending before the same or another court with jurisdiction to determine it.

127. The provisions of Section 6 of Civil Procedure Act defines the above principle or the doctrine as follows:

"..... No court shall proceed with the trial of any suit or proceedings in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties or between parties under whom they

or any of them claim litigating under the same title, where such suit or proceeding is pending in the same court or any other court having jurisdiction in Kenya to grant the relief claimed.”

128. The evidence adduced before this court subsequently by the respondent vide her testimony in court was that she was aware that PMCC EXX/2021 was withdrawn on the 16.12.2021 with costs in her favour. In the circumstances, the doctrine of sub-judice has no merit as there was no evidence that there was any other suit pending before court over the same subject matter between the same parties.

On Whether the Matrimonial Property Act, 2013 is applicable in the instant suit

129. It is the petitioner’s case that the repealed English Married Women’s Property Act is the applicable law in the instant suit as the suit properties were acquired during coverture of a marriage that was dissolved on 2.3.2010 long before the enactment of the Matrimonial Property Act 2013. This is opposed by the respondent who argues that the Matrimonial Property Act, 2013 is the applicable law in this suit.

130. I have considered both arguments and the authorities relied on by the parties. It is not clear why the petitioner insists that the applicable law in the instant case is the Married Women’s Property Act of England which has clearly been repealed by Section 19 of the Matrimonial Property Act, 2013.

131. Furthermore, the authority upon which the petitioner bases his arguments on this assertion, *PNN (supra)*, is distinct from the instant case in that in *PNN supra* the Originating summons were filed in 2004 and judgment in the High Court delivered in 2012 prior to the enactment of the Matrimonial Property Act, 2013 and therefore the Married Women’s Property Act was as at that time of the judgment still in force as was observed by the Court of Appeal.

132. In the circumstances, the applicable law herein is the Matrimonial Property Act of 2013 as the issue for determination is the ownership of alleged matrimonial property in Kenya by parties who were residing in Kenya at a time when the Matrimonial Property Act was effective.

On Whether the suit properties are Matrimonial Property or trust properties

133. On what constitutes matrimonial property, I am guided by Section 6 of the Matrimonial Property Act which 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.

134. Basically for property to qualify as matrimonial property, it must meet the definition in Section 6 of the Matrimonial Property Act as reproduced hereinabove.

135. From the evidence adduced herein, it is clear that there was no matrimonial home in this instant case and further that household goods and effects are not in issue. What is being contested are the three immovable properties comprising land.

136. It is also clear from the evidence adduced herein that the parties herein were married having solemnized their union in a civil marriage at the Registrar’s chamber in Mombasa on the 17.2.2000 which marriage was dissolved vide a court decision rendered on the 2.3.2010

137. Therefore, matrimonial property in this instance would be all that immovable and movable property jointly owned and acquired during the subsistence of the marriage.

138. From the evidence adduced, I note that *Title No. Uholo/Ugunja/xxxx* is registered in the name of the respondent, the same

having been done on the 26.5.1999 vide a transfer from the petitioner who was the previous owner, he himself having acquired the same from the original owner on the 19.9.1995 before the petitioner and the Respondent got married.

139. Title No. Uholo/Ugunja/xxxx and Title No. Uholo/Ugunja/xxxx are, from the evidence adduced herein, said to be registered in the name of the respondent absolutely with the former having been acquired on the 3.1.2001 and title deed issued on the same day with the latter having been acquired on the 28.6.2002 and title deed issued on the same date. The petitioner claims that he purchased the said properties and registered them in the respondent's name. The respondent on the other hand claims that she single handedly purchased the said properties.

140. Therefore, based on section 6 of the Matrimonial Property Act, only Title No. Uholo/Ugunja/xxxx and Title No. Uholo/Ugunja/xxxx form part of Matrimonial Property, as they were acquired during the subsistence of the marriage between the petitioner and the respondent. Property No. Uholo/Ugunja/xxxx cannot by any stretch of imagination be described as matrimonial property, in as much as it can be available to be claimed in other forum.

The next question stemming from the issue above is Whether the petitioner contributed towards the acquisition of the matrimonial properties

141. I have considered the submissions raised herein on this ground. Contribution towards the acquisition of matrimonial property is defined under Section 2 of the Matrimonial Property Act, 2013 in the following terms:

In this Act, unless the context otherwise requires—

“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.

142. The petitioner adduced evidence showing that he was the one who paid for both Uholo/Ugunja/xxxx and Uholo/Ugunja/xxxx. The evidence adduced by his witnesses was in my mind corroborative of each other's taking into considerations that most of his witnesses were very old and their memories may have slightly faded with time hence the minor discrepancies in their testimonies which discrepancies I do not find to be material. The exhibits in the form of agreement for the sale of the said parcels of land are also very old an indication that they could not have been manufactured to suit these proceedings. The title numbers are not shown on the old agreements but the witnesses remembered the considerations paid and on who signed on the said agreement. The testimonies of these witnesses corroborated the testimony of the petitioner.

143. The petitioner's witnesses' testimonies compared to the respondent's testimony that she acquired both properties being plots xxxx and xxxx on her own without the help of the petitioner, I find that the respondent's assertions are not in any way corroborated either by documentary or viva voce evidence that she adduced in court. She was at pains to explain how she single handedly acquired the suit properties and how she paid the consideration to the vendors. She was not even sure of the consideration paid and no single document was produced to show that she was the vendee. Although she claimed that in her divorce proceedings she had claimed that the petitioner had burnt her items, I have perused the judgment in the divorce cause No. 30 of 2009 before a Mombasa Court, although cited as before the Court of Appeal which I find erroneous, in the said judgment, the respondent only claimed that the petitioner burnt her clothes and documents. She never specified which documents were burnt. She never produced any proceedings in that court for this court to peruse her testimony on what specific documents were burnt by the petitioner. She also did not produce any police abstract to show that she reported the loss of sale of land agreements or documents through the acts of the petitioner burning the same.

144. That said, it is clear that both properties named herein were acquired during the pendency of the parties' marriage during which time, despite lack of evidence of the money paid by the respondent to the acquisition, the parties hereto had an issue and had companionship and as such there was child care, companionship and domestic work and management of their matrimonial home by both of them as they lived in Mombasa. Both parties worked and lived in Mombasa and there is no doubt that at the time of the acquisition of the aforesaid properties, they were living together and not separated.

145. Accordingly, I am satisfied that on a balance of probabilities, the evidence adduced by both parties point toward the two properties Uholo/Ugunja/xxxx and Uholo/Ugunja/xxxx having been acquired during the subsistence of the marriage between the petitioner and the respondent and are therefore matrimonial properties and that each one of the parties hereto contributed towards the acquisition of the same. The contribution was both in monetary terms as well as non-monetary contribution and includes domestic work and management of the matrimonial home; child care; and companionship.

As to Whether the petitioner is entitled to an equal share or such higher proportion of the matrimonial properties

146. Section 7 of the Matrimonial Property Act stipulates 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.”

147. Article 45(3) of the Constitution provides that:

“Parties to a marriage are entitled to equal rights at the time of marriage, during the marriage and at the dissolution of marriage.”

148. Although this provision grants equal rights to parties to a marriage as stipulated, this does not mean that a party to a marriage is entitled to equal share of the property acquired during marriage unless his or her contribution is ascertained to have been equal to that of the other spouse. The Article guides the courts in determining the rights of parties to a marriage in respect of subdivision of matrimonial property. This view, that the provisions of Article 45(3) of the Constitution does not entitle parties to equal distribution of matrimonial property, was taken by the Court of Appeal (Kiage, JA) in *PNN (supra)* where the learned Judge of Appeal stated:

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

149. The share of matrimonial property each party to a marriage is pegged on the contribution made by each of them. That is the law as it is and as applied in various decisions.

150. In the circumstances, in the case of Title No. Uholo/Ugunja/xxxx and Title No. Uholo/Ugunja/xxxx, and based on the provisions of Section 2 of the Matrimonial Property Act, 2013, it is my opinion that there was 50% contribution from both parties in acquiring the properties. I must however clarify that this court is not concerned with the determination of the question of who was the rightful owner of the suit properties or whether the respondent held the property in trust for herself and the petitioner, as that is the mandate of the Environment and Land Court. In addition, the issue raised by the petitioner that there was a trust created by the alleged registration of the suit properties in the respondent's name similarly falls within the mandate of the Environment and Land Court as it entails delving into the determination of who rightfully owns the said pieces of land.

151. Moreover, under Section 6 (2) of the Matrimonial Property Act, 2013, trust property, including property held in trust under customary law, does not form part of matrimonial property.

On Whether the Petitioner's Exhibits 7(a) – (g) should be expunged

152. The respondent submitted that the photographic evidence adduced by the petitioner as exhibits 7 (a) – (g) should be expunged from the record for failure to comply with the provisions of Section 106B (4) of the Evidence Act. Section 106B of the Evidence Act provides for the admissibility of electronic records. The Section provides that:

“In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following—

- (a) identifying the electronic record containing the statement and describing the manner in which it was produced;*
- (b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;*
- (c) dealing with any matters to which conditions mentioned in subsection (2) relate; and*
- (d) purporting to be signed by a person occupying a responsible position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate), shall be evidence of any matter stated in the certificate and for the purpose of this subsection it shall be sufficient for a matter to be stated to be the best of the knowledge of the person stating it.”*

153. The above section must be read together with Section 106 B (1) which provides that:

“Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on paper, stored, recorded or copied on optical or electro-magnetic media produced by a computer (herein referred to as “computer output”) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein where direct evidence would be admissible.”

154. Therefore, any party seeking to rely on electronic records evidence must of necessity expect to be asked whether they have complied with the law regarding the production of that evidence. I have perused the court record of documents as produced as exhibits by the Petitioner and as marked PEx 7(a) to 7(g) being photographs. No certificate of electronic evidence is attached. For the above reason, I find and hold that those exhibits are inadmissible in evidence. They are accordingly expunged from the record.

155. In the end, I make the following final orders:

- (a) I hereby declare that **that property known as Title No. Uholo/Ugunja/xxxx is not matrimonial property as it was acquired by the petitioner and transferred in the name of the respondent before the two got married;***
- (b) **I hereby declare that Title No. Uholo/Ugunja/xxxx and Title No. Uholo/Ugunja/xxxx together with all developments thereon and registered in the name NMS. the respondent herein are matrimonial properties;***
- (c) **I hereby declare that both the petitioner and the respondent contributed in equal proportions the acquisition of property in Titles Nos. Uholo/Ugunja/xxxx and Uholo/Ugunja /xxxx during the subsistence of their marriage;***
- (d) **That the aforesaid properties Titles Nos. Uholo/Ugunja/xxxx and Uholo/Ugunja /xxxx shall be valued by a joint valuer to be agreed upon by the parties failing which a valuer shall be appointed by this honourable court and the same be shared in the manner declared;***
- (e) **That there is liberty to apply in terms of order No. d above or on any settlement terms of this judgment;***
- (f) **That each party shall bear their own costs of these proceedings***

Orders accordingly.

File closed.

Dated, Signed and Delivered at Siaya this 4th Day of April, 2022

R.E. ABURILI

JUDGE



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