Case Number:	Matrimonial Property Cause 49 of 2019
Date Delivered:	22 Jul 2021
Case Class:	Civil
Court:	High Court at Nairobi (Milimani Law Courts)
Case Action:	Judgment
Judge:	Stella Ngali Mutuku
Citation:	AWM v JGK [2021] eKLR
Advocates:	-
Case Summary:	-
Court Division:	Family
History Magistrates:	-
County:	Nairobi
Docket Number:	-
History Docket Number:	-
Case Outcome:	Application allowed.
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-

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REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

FAMILY DIVISION

IN THE MATTER OF SECTION 17 OF THE MATRIMONIAL PROPERTY ACT 2013

MATRIMONIAL PROPERTY CAUSE NO. 49 OF 2019

AWM.....APPLICANT

VERSUS

JGK.....RESPONDENT

JUDGMENT

The Applicant's Case

This Originating Summons is brought pursuant to Order 39 of the Civil Procedure Rules, Section 3A of the Civil Procedure Act, Section 2, 6, 7, 9 and 14 of the Matrimonial Property Act 2013, Section 93 (3) of the Land Registration Act and all other enabling provisions of the law. In it, AWM, the Applicant, seeks against JGK, the Respondent, the following orders:

1. That an order does issue declaring that 50% or such other higher proportion of the the properties listed below and held jointly by the Applicant and the Respondent is for the beneficial interest of the Applicant.

a) Villa Number 56 erected on Land Reference No. xxxx.

b) 2 pieces of land in MN for which the Respondent is holding the titles.

c) Furniture, fittings and other household goods including but not limited to the items bought by the Applicant.

d) Cost incurred as well as financial contributions to matrimonial home.

2. That the division to separate the interest in the properties be done within 90 days from the date of the judgment at the Respondent's cost.

3. That the Respondent be ordered to transfer the Applicant's share in the property to her within 60 days from the date of division.

4. That in default, the Registrar High Court of Kenya be authorized to sign any transfer documents in place of the Respondent or any other person holding any title on behalf of the Applicant to effect all the orders of this court in favour of the Applicant.

5. That an order does issue declaring the Respondent is accountable to the Applicant in respect of all the income derived from the said properties.

6. That this honourable court be pleased to order that the properties and the income from the same be settled in proportions aforesaid or as the court may order.

7. That the costs of the summons be provided for.

The grounds in support of the Originating Summons are found on the face of the Application and in the Supporting Affidavit sworn by the Applicant on 31st July 2019. The Applicant states that the properties in issue were acquired, developed, improved and maintained by joint efforts of the Applicant and Respondent during the pendency of their marriage and that the Applicant's contribution was monetary as well as non-monetary contribution in the form of childcare, companionship and management of the matrimonial home and properties. Further that it is in the best interest of justice that the orders sought are granted.

The Applicant has sworn an affidavit in which she deposes that she and the Respondent solemnized their marriage at the Registrar's Office in Nairobi County on 7th January 2015. That the marriage broke down leading to divorce and issuance of decree nisi on 24th July 2019 in Divorce Cause No. 149 of 2019. That both she and the Respondent acquired, developed, improved and maintained movable and immovable property during the subsistence of their marriage. That she contributed Kshs 10,338,020.91 million towards purchase of their matrimonial home (particulars of the breakdown of payments is found on a table under Paragraph 38 of the Supporting Affidavit). That the same is registered in both their names. That the purchase was only possible because she paid the deposit on the home and took advantage of the staff mortgage rate at her work place at Kenya Commercial Bank (KCB).

She further avers that she contributed Kshs 619,461 toward the purchase of the 2 parcels of land in MN in their joint names and to which the Respondent holds the titles. That she contributed Kshs 712,400 towards the purchase of furniture, household goods, fittings and other utilities in the matrimonial home as shown on a table under Paragraph 43 of the Supporting Affidavit. That she paid Kshs 550,000 towards the purchase of car registration KBU xxxM and that Motor vehicle Registration No. KBS xxxC, Mitsubishi Pajero was acquired during the pendency of the marriage.

The Applicant further claims that she contributed to the family by catering for the welfare of the children, by buying food, clothing and handling school related expenses, participating in children's extracurricular activities, grooming and entertainment. She states that she single-handedly provided for her son CW and covered most of their daughter's SN's expenses on her own. That additionally she attended all of the children's school functions and was involved in other affairs regarding their education.

The Applicant deposes that she also engaged in domestic work and management of the matrimonial home by purchasing day to day household goods and ensuring the home amenities were fully functional; made meals for the family; handling household chores and demands; paid, trained and hired domestic workers; paid staff wages and maintained good and proper hygienic conditions in the home. She also states that she provided the Respondent with companionship and support through decision making, problem solving, support with compassion and sympathy and attending extended family functions in the absence of the Respondent.

The Respondent's Case

The Respondent has opposed this Originating Summons. In his Replying Affidavit dated 17th September 2019 he deposed that the Applicant does not deserve a 50% share in the matrimonial properties. That indeed the Applicant contributed to acquisition of some of the properties but not 50% on any of the properties. He asserts that the Applicant contributed Kshs 10,333,021 towards the purchase of the matrimonial property yet the total cost was Kshs 28,149,021 of which he paid the rest of the price. It is his contention that while the matrimonial property was partly financed by a mortgage loan through the Applicant's employer, he repaid all the loan related costs and subsequent monthly instalments of Kshs 150,000 for the entire life of the mortgage loan through standing orders effected to the Applicant's bank account because the Applicant was in debt with her employer to the extent of Kshs.3,500,000 which he cleared in full before loan was approved.

He also states that the Applicant contributed only Kshs 619,462 towards the purchase of one of the pieces of land in M, N whose total purchase price was Kshs 1,600,000 and did not contribute to the purchase of the other.

Regarding the motor vehicles it is the Respondent's contention that the Applicant did not pray for the same in the Originating Summons and did not contribute to their purchase. Further, he states that he bought most of the house fittings and furniture and that the Applicant only came with old items when they moved in together.

The Respondent deposed further that the Applicant had a child before they got married and that she made it clear that she would take care of him single-handedly and for their daughter, he jointly raised and took care of her needs equally with the Applicant. Further he stated that throughout their marriage they had a house help who did all the housework, cooking and taking care of the

children as the applicant had a 9.00am to 5.00pm job. Regarding companionship he avers that the same is not contribution in acquisition of property.

It is his prayer that the Applicant is only granted what she contributed towards acquisition of the properties and that he is willing to refund the Applicant her share of Kshs 619,462 she contributed to acquisition of the parcel of land in M, N.

Applicant's Response

In the Applicant's Affidavit dated 28th October 2019 in response to the Respondent's Replying Affidavit, the Applicant claims that the Respondent falsified and omitted substantive material facts and withheld crucial documents. She refuted the claim that the purchase price for the matrimonial home amounted to Kshs 28,149,021. She also stated that the borehole repair fees and arbitration fees were not part of the purchase price but rather the Respondent's obligations at home. She states that the Respondent failed to mention that 3½ years before they purchased their matrimonial home, he lived in her house where she catered for all expenses and that she looked for buyers single-handedly and sold the said house to help purchase their matrimonial home. That she stepped in to put down a deposit to purchase the same when negotiations broke down due to the Respondent's inability to amicably resolve issues and raise the required deposit. She also refutes claims that she contributed to only one (1) piece of land in M–N and contends that the monies in relation to both parcels of land amounted to Kshs 1,600,000. She states that the Respondent hid the titles and sale agreements in relation to these properties as well as vehicle transfer documents for motor vehicle KBK xxxL which sold for Kshs 550,000. She states that the Respondent topped up this amount and bought motor vehicle KBU xxxM which means she contributed to its purchase and thus his claim of non-contribution is false. She also refutes the Respondent's claim to 50% contribution for their daughters' needs as well as the Applicant's apparent non-contribution to house chores, involvement in the children's activities, house management and paying nannies.

The Respondent filed a Supplementary Affidavit dated 21st November 2019 where he reiterated the contents of his Replying Affidavit dated 12th September 2019. He further stated that the total sale price of their matrimonial home was Kshs 21,500,000 and late payment penalty of Kshs 1,000,000 all giving a total of a Kshs 22,500,000. He stated that this amount was offset by a deposit of Kshs 8,500,000, penalty of Kshs 1,000,000 and a mortgage of Kshs 13,000,000 and that there were other related costs that the Applicant is not considering.

Submissions

The Applicant's submissions are dated 5th May 2021. She has identified three issues for determination as follows:

1. Whether the suit properties constitute matrimonial property.

2. Whether the Applicant contributed towards the acquisition and the development of the matrimonial properties.

3. Whether the Applicant is entitled to an equal share or such higher proportion of the matrimonial properties.

On whether the suit properties constitute matrimonial property, the Applicant submitted that for properties to qualify to be matrimonial property, they ought to have been acquired during the subsistence of the marriage between the Applicant and the Respondent unless otherwise agreed by the parties that such property would not form part of matrimonial property. The Applicant cited Section 6 of the Matrimonial Property Act to buttress her submissions on that issue. She submitted that they got married under Kikuyu Customary Law in August 2012 and solemnized the marriage at the Registrar's Office on 7th January 2015. She submitted that the properties listed in this Cause were acquired during the pendency of their marriage and therefore constitute matrimonial property.

On whether the Applicant contributed towards the acquisition and the development of the matrimonial properties, she submitted that she contributed Kshs 10,338,020.91 towards the purchase of the Villa situate on L. R. No. xxxxx, Limuru and Kshs 619,462 towards the 2 parcels of land in M, N County. She submitted that the two motor vehicles were bought during the pendency of the marriage, so were the furnishings, fittings, and other household goods. She submitted that she contributed towards the marriage in other non-monetary means in childcare, domestic work, home management and companionship.

Finally she submitted that she is entitled to equal share or such other higher proportion of the matrimonial properties. She cited

Article 45 (1) (3) of the Constitution to buttress her submissions. She relied on a number of authorities, including **MNH V. FHM (2018) eKLR,** which this court has had time to read.

The Respondent's submissions are dated 28th May 2021. He submitted that the Applicant contributed only 37% to the overall cost of their matrimonial home and only 39% of the purchase price for one of the two parcels of land in MN. Regarding the motor vehicles, he submitted that the Applicant did not pray in the Originating Summons for division of any motor vehicles and that he solely financed the vehicles with one of the vehicles registered in his name and the other in the Applicant's name. For furniture and fittings, he submitted that the Applicant failed to clearly show how she contributed the moneys and that she left their matrimonial home voluntarily and thus should not benefit from her own actions.

The Respondent submitted further that he contributed equally to their daughter's expenses and that the Applicant voluntarily decided to take care of her son upon marriage. He submitted that the Applicant did not carry out any domestic chores as she worked a 9.00am to 5.00pm job. Regarding companionship, the Respondent submitted that it is mutual and one cannot claim contribution of the same and further that their marriage broke down due to the Applicant's infidelity and multiple affairs and denying him companionship.

In division of matrimonial property, the Respondent submitted that there is no set rule or mathematical formula. He relies in the court of appeal decision in ***PNN v. ZWN (2017) eKLR***.

He submitted that both he and the Applicant were fully employed during their marriage and contributed financially to acquisition of matrimonial property and thus the court should divide as per their specific contributions. It is his submission that the Applicant is trying to enrich herself and the same should not be allowed as was in the case of ***TWM v FMC (2018) eKLR.***

Analysis and Determination

I have read, with a keen eye, all the pleadings of both the Applicant and the Respondent, all the submissions and all the authorities they are relying on. This matter proceeded by way of Affidavits and written submissions. Parties had also filed respective witness statements. On 17th September 2020, this court (Onyiego, J) had directed that this matter proceeds by way of viva voce evidence. However, when the matter was listed before me, it was in the middle of Covid 19 Pandemic and parties were alive to the fact that viva voce evidence entailed physical presence in court for the hearing. Following the Ministry of Health Guidelines in view of the Pandemic this was not viable. Parties changed their mind and opted to dispose of the matter by way of written submissions, affidavits and statements. Reliance on witness statements that have not been admitted into evidence the normal way and the witnesses subjected to cross examination presented a challenge to this court. I have however noted that all the contents of the witness statements are reiterated in the affidavits and written submissions. I am therefore confident that no party will be prejudiced.

From the material placed before me, it is clear to me that the parties herein were married having solemnized their marriage before the Registrar on 7th January 2015; that their marriage has broken down and their divorce has been finalized. The issue between them is simply distribution of property acquired during the pendency of their marriage. From the Originating Summons, I note that the properties sought to be shared are the following:

1. Villa No. 56 situated on L. R. No. xxxxx.

2. Two (2) pieces of land situated in M, N.

3. Motor Vehicles KBU xxxM Volkswagen Jetta and KBS xxxC Mitsubishi Pajero.

4. Furniture, fittings and other household goods.

5. Costs incurred and financial contributions to the matrimonial home.

The Respondent has argued that the Applicant did not plead in her Originating Summons the two motor vehicles. I have however noted that the Affidavit in support of the Originating Summons contains the claim for the two motor vehicles and the same is captured in the Applicant's Submissions. It is my view that the Originating Summons is not complete without the Supporting Affidavit and therefore the Applicant has clearly set out her claim in respect of the two motor vehicles. I have also noted that the

Respondent does not deny that the motor vehicles in question were acquired during the pendency of their marriage.

The case for the Applicant is simply that the properties listed here are matrimonial properties and were acquired and developed through contribution, monetary and non-monetary, of both the Applicant and the Respondent during the pendency of their marriage and that the properties ought to be shared on a 50-50 basis. The case for the Respondent is that the Applicant contributed to acquisition of the matrimonial property but her contribution does not entitle her to a 50% share but 37% share.

I agree with the Applicant on the issues for determination and I proceed to determine the following:

1. Whether the property herein amounts to matrimonial property.

2. Whether the Applicant contributed towards the acquisition and the development of the matrimonial properties.

3. Whether the Applicant is entitled to an equal share or such higher proportion of the matrimonial properties.

Whether suit property amounts to matrimonial property

On what constitutes matrimonial property, I am guided by Section 6 of the Matrimonial Property Act that defines matrimonial property as:

(a) the matrimonial home or homes;

(b) household goods and effects in the matrimonial home or homes; or

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

Basically for property to qualify as matrimonial property, it must meet the definition in Section 6 quoted above. From the evidence available in court, it is clear to me that the Applicant and the Respondent solemnized their union before the Registrar in 2015. This brings their dispute within the framework of the Matrimonial Property Act, 2013. This Act commenced on 16th January 2014. Both parties agree that they bought their matrimonial home in 2015 after they solemnized their marriage. They moved in their home immediately and made it their home up until they separated and subsequently divorce. They said that the property is registered in both their names. As far as the two parcels of land in MN are concerned, both applicants are in agreement that the same was bought during the subsistence of their marriage but the same were registered in the name of the Respondent. It is the Applicant's contention that they bought the same together with the intention of the land being part of their matrimonial property. The Respondent does not refute the contribution towards purchasing the matrimonial home and M parcels by both parties, his only contention being that the contribution by the Applicant does not amount to half of the purchase price of the said properties.

In respect to the motor vehicles, the Applicant contends that they are part of the matrimonial property. The Applicant contends that Motor vehicles No. KBU xxxM and No. KBS xxxC were bought during their marriage. This is not contested by the Respondent. His only issue being that the Applicant has not claimed the motor vehicles in her Originating Summons.

Regarding furniture, fittings and household goods, the Applicant claims that she bought them during the subsistence of their marriage and brought some from her former home before she married the Respondent. It is not contested that the furniture, fittings and household goods form part of the matrimonial property. It is therefore clear that the parties are in agreement that all the properties listed here is matrimonial property as defined and the same having been acquired during subsistence of their marriage.

In my considered view therefore, after considering all the evidence by both parties, the properties listed in this matter are matrimonial property in the meaning of Section 6 of the Matrimonial Property Act and I so find.

Whether the applicant contributed towards the acquisition and development of the matrimonial properties

I have considered rival arguments on the issue of contribution towards acquisition of matrimonial property. I have read the authorities cited by each side. I am alive to the fact that each case must be determined based on its own peculiar circumstances. Indeed the Court of Appeal had this in mind in **TKM v SMW [2020] eKLR** where it is stated as follows:

"We bear in mind the edict in Muthembwa v. Muthembwa (2002) 1 EA 186, and many other decisions reminding the courts that in assessing the contribution of spouses in acquisition of matrimonial property, each case must be dealt with on the basis of its peculiar facts and circumstances but bearing in mind the principle of fairness."

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.

The Applicant herein claims to have made both monetary and non-monetary contribution. The Respondent, while admitting partial monetary contribution by the Applicant, contents that the Applicant was working and was therefore not contributing by doing domestic chores and that she had domestic workers for that purpose. He also claims that companionship does not amount to contribution towards matrimonial property.

Evidence is clear that the Applicant was in gainful full time employment at KCB. This is admitted by the Respondent. The Applicant claimed that she sold her house to raise deposit for their matrimonial home. This was not denied by the Respondent. Evidence also shows that the Applicant obtained a loan at staff rates from her employer and that this money was utilized to purchase the matrimonial home. This is also admitted by the Respondent. He did not deny that the matrimonial home is registered in both their names. The Respondent changed his evidence when accused of not telling the truth in regard to the amount paid for the matrimonial home. At first he had stated that the total purchase price was 28,149,021 with the Applicant contributing Kshs 10,333,020.91 and the Respondent contributing the balance. He changed this to state that the total purchase price was Kshs 22,500,000. To my mind, by shifting the evidence, the Respondent may be withholding the truth in respect of each spouse's contribution towards purchasing the matrimonial home. I am satisfied that the Applicant made considerable monetary contribution towards the purchase of their matrimonial home.

The Respondent admitted that the M land was bought by both of them although he claims that the Applicant only contributed Kshs 619,461 towards one of the parcels of land. The documents in respect of the acquisition of the M land are not available. The Applicant claimed that they are in the custody of the Respondent. This is not denied by the Respondent. This court was not able to confirm the total amount paid towards the purchase of the two parcels of land. I am satisfied that the Applicant contributed towards the acquisition of the two pieces of land in M.

On the issue of the motor vehicles, the Applicant claimed that her motor vehicle registration number KBK xxxL was sold for Kshs 550,000 and this money was part of the amount used to pay for motor vehicle KBU xxxM. This evidence was not controverted by the Respondent. The documents relating to the motor vehicles were not available. It is claimed that the Respondent is in possession of them. The Respondent did not refute that claim. In the absence of evidence to the contrary, it is my considered view that the Applicant contributed to the acquisition of the motor vehicle KBU xxxM and that motor vehicle KBS xxxL was acquired during the pendency of the marriage between the two. It is also my finding that both parties contributed towards the acquisition of household goods, furniture and fittings.

In respect of non-monetary contribution, I take the view that the Applicant made her contribution in the manner defined under Section 2 of the Matrimonial Property Act. I have considered the argument by the Respondent that the Applicant had domestic workers and did not do household chores. However, a mother's contribution in a home cannot be quantified in monetary terms. Even where there is domestic help, in most cases it is the duty of the mother to ensure that the home runs smoothly and that all the needs of the children and the husband are catered for. Even when she is gainfully employed as claimed in this matter, her duties once she gets home do not end until all is well in the home. This is what the Applicant is claiming. She also provided companionship to the Respondent. The Respondent argues that companionship does not constitute contribution towards matrimonial property. Section 2 of the Matrimonial Property Act defines contribution to include companionship.

The materials placed before the court in this matter to some extent supports the theory that the Applicant indeed actively took part in child care. It is the Applicants evidence that she made time for the children and took part in their school and social activities as well as looking after the Respondents child in his absence. Additionally, the Applicant claims she took care of their home and made it a conducive environment for living by ensuring hygiene, proper menu and training and hiring nannies to help around the house and further paid the said nannies and took care of the children's expenses. She attached bank statements showing contribution to different issues in the home including children's fees and activities, nanny salaries and other household expenditure.

It is clear to this court that the Matrimonial Property Act of 2013 recognizes and formalizes both the monetary and non-monetary contribution of parties in a marriage. The same position is captured in authorities including **NWM v KNM (2014) eKLR where it was** stated that the court must give effect to both monetary and non-monetary contributions that both the applicant and the Respondent made during the currency of the marriage to acquire the matrimonial property. The same position was held by the House of Lords in **White vs White (200) UKHL 54** where the Court alluded to the greater awareness of the value of non-financial contributions to the welfare of the family.

It is my considered view that the non-monetary contribution often-times cannot be quantified. If that contribution were to be reduced to monetary terms I am sure that a woman's non-monetary contribution in the home would amount to a higher amount compared to that of the man. It is my finding therefore that the Applicant made monetary and non-monetary contribution towards acquiring the matrimonial property and that her non-monetary contribution is higher than that of the Respondent.

Whether the Applicant is entitled to an equal share or such higher proportion of the matrimonial properties.

Contribution by the Applicant is not denied by the Respondent, the only issue being the percentage of that contribution. The Applicant seeks 50% - 50% for each party but the Respondent claims that the Applicant's contribution amounts to 37% and not 50%. From the pleadings before this court, affidavits and submissions, the Applicant claims that the Respondent has kept documents from her that prove her contribution towards acquiring matrimonial property. She argues that because of this she was not able to table before the court some evidence in support of her claim. The Respondent has not denied these claims.

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

"Subject to section 6(3), ownership of matrimonial property vests in the spouses according to the contribution of either spouse towards its acquisition, and shall be divided between the spouses if they divorce or their marriage is otherwise dissolved."

Section 9 of the same Act recognizes contribution through improvement of a property acquired before or during the marriage in the following terms:

"Where one spouse acquires property before or during the marriage and the property acquired during the marriage does not become matrimonial property, but the 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."

I have considered the provisions of the Constitution on Article 45(3) as well. This article 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"

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. However the article guides the courts in determining the rights of parties to a marriage in respect to 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 v ZWN [2017] eKLR** where the good judge has this to say:

"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."

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

In determining the percentage of the contribution made by each party, I have carefully scrutinized the evidence of each party. The Applicant in an effort to convince the court of her monetary contribution towards the acquisition of the matrimonial properties, produced bank statements, Mpesa messages and correspondence with different people including the Respondent . She further submitted that through her employment she acquired loans and monies that she contributed towards the acquisition of matrimonial property as well as the development of the properties in question. Regarding the matrimonial property, both parties agree that the Applicant contributed Kshs. 10,338,020 and that she took advantage of the staff rate at her work place to get mortgage and further reduced her pension benefit from 5% to 2% as evidenced in the attached documents. They also agree that the Applicant made the down payment deposit of Kshs. 5,000,000 on the home. The Respondent however contends that he contributed much more than the Applicant to the tune of 63% of the total price.

For the MN parcels of land, the Applicant argues that she contributed to acquisition of both properties in the sum of Kshs. 619,462. The Respondent however opposes this stating that the Applicant only contributed to acquisition of one parcel of land MM and did not contribute to acquisition of the other ML. To this end the Respondent produced a spreadsheet analysis as well as bank statements of transfer. A keen analysis of the bank statements however shows that they do not tally up with the spreadsheet of the monies paid. That being said both parties are in agreement that the parcels of land are registered in the Respondents name though they are matrimonial property bought during subsistence of their marriage.

Regarding the motor vehicles the Applicant contends that she made monetary contribution to the acquisition of Volkswagen Jetta KBU xxxM by channeling the monies from the car she sold to a Sacco to which the Respondent took out and added money to buy. She also states that prior to acquiring his own vehicle the respondent used hers for a period of 3 years. This allegation is refuted by the Respondent. Evidence produced shows that the vehicle is registered in the Applicants name and that it was bought after she sold her previous car. It is however not clear if the same proceeds were used in the purchase as no evidence pertaining to that has been produced.

On furniture and fittings, the Applicant has produced picture evidence as well a detailed list of contributions she made in support of her claim of contribution Kshs. 712,000 toward their acquisition. The Respondent refutes this claim. The Applicant in this case has not produced all the receipts to support her claim. To my mind therefore, the evidence produced by the Applicant shows clear and substantial monetary contribution toward the matrimonial property and on a balance of probabilities.

The parties also agree that the Applicant gave the Respondent a monthly upkeep of Kshs. 100,000/= for a period of 9 months after he lost his job.

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

The totality of my analysis of the evidence presented before me is that the Applicant made substantial monetary contribution towards acquiring, developing and improving the matrimonial properties especially the matrimonial home. She also made substantial non-monetary contribution, which cannot be quantified in monetary terms. I am therefore satisfied that, basing my decision on the peculiar circumstances of this case, I am satisfied on a balance of probabilities that the Applicant has proved her

case to the required standard. I do not think that her contribution amounted to 37% as claimed by the Respondent. To determine this matter on a 63% - 37% ratio to the Respondent and the Applicant respectively would be going against the provisions of the law and condemning the Applicant to a share too small to reflect her total contribution both monetary and non-monetary. Her efforts in contribution to the matrimonial property is clear to see. Consequently, I find for the Applicant and allow this Originating Summons. I grant the following specific orders:

1. That a declaration is hereby issued that 50% proportion of the the properties listed below and held jointly by the Applicant and the Respondent, or held by the Respondent as the case may be, is for the beneficial interest of the Applicant.

e) Villa Number 56 erected on Land Reference No. xxxxx.

f) 2 pieces of land in MN for which the Respondent is holding the titles.

g) Furniture, fittings and other household goods including but not limited to the items bought by the Applicant.

2. That the Applicants shall retain Motor Vehicle Registration No. KBU xxxM and the Respondent shall retain Motor Vehicle Registration No. KBS xxxC.

3. That the division to separate the interest in the properties shall be done within 120 days from the date of this judgment at the Respondent's cost.

4. That the Respondent is hereby ordered to transfer the Applicant's share in the property to her within 90 days from the date of division.

5. That in default, the Deputy Registrar of the Family Division, High Court of Kenya is hereby authorized to sign any transfer documents in place of the Respondent or any other person holding any title on behalf of the Respondent to effect all the orders of this court in favour of the Applicant.

6. That this honourable court hereby orders that the properties and the income from the same shall be settled in proportions of 50% - 50%.

7. That each party shall bear own costs in respect to this Originating Summons.

Orders shall issue accordingly.

DATED, SIGNED AND DELIVERED THIS 22ND JULY 2021.

S. N. MUTUKU

JUDGE

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