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22 APR 2016

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

REPUBLIC OF KENYA
IN THE HIGH COURT AT KENYA IN NAIROBI
CONSTITUTIONAL & HUMAN RIGHTS DIVISION
PETITION NO 164 OF 2016

IN THE MATTER OF ARTICLES 20, 21, 22(1) and (2) & 23(1) and (3) OF THE
CONSTITUTION

AND

IN THE MATTER OF THE CONTRAVENTION OF RIGHTS AND FUNDAMENTAL
FREEDOMS UNDER ARTICLES 2(4), 2(6), 10, 27, 28, 40(1) and (2), 45 (3), 60 (1)(a)& (f)
& 68(c) (iii)&(vi) OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF SECTION 7 OF THE MATRIMONIAL PROPERTY ACT 2013

BETWEEN

FEDERATION OF WOMEN LAWYERS KENYA
(FIDA-K).....

PETITIONER

AND

THE HON. ATTORNEY GENERAL.....

RESPONDENT

PETITION



This Humble Petition of the **FEDERATION OF WOMEN LAWYERS KENYA (FIDA-K)** whose address for the purpose of this Petition is c/o M/s W. Ndegwa & Associates Advocates, 1st Floor Summit House Room 109 University Way P.O. Box 32852-00600 Nairobi states as follows:

A. NAMES AND DESCRIPTION OF THE PARTIES AND THE CAPACITY TO SUE AND TO BE SUED

1. The Petitioner is a non-governmental, non-profit and non-partisan duly registered under and in accordance with the pertinent laws of the Republic of Kenya. The Petitioner has for the past 30 years developed expertise relating to discrimination experienced by women and girls in Kenya through provision of legal services to indigent women, engagement in legal, policy and legislative reform, treaty monitoring, research, education and advocacy.
2. The Petitioner institutes these proceedings as provided for under Article 22 of the Constitution in their own interest as one of the Petitioners and on behalf of all other women in Kenya.
3. The Petitioners are claiming that rights and fundamental freedoms of women in the Constitution and more specifically the Bill of Rights have been denied, violated, infringed and are threatened.
4. The Respondent is the Attorney General of Kenya sued as the principal legal adviser to the government and is enjoined to these proceedings pursuant to his obligation provided as under Article 156 of the Constitution and more specifically as the
 - i. The principal legal adviser to the Government of the Republic of Kenya
 - ii. The State Officer constitutionally authorized and mandated to represent the Government in Court or in any other legal proceedings to which the government is a party. Service of Court process shall be affected through the Petitioners' Advocates offices.
5. The Respondent, by failing to /neglecting to advise the National Assembly and the President of the Republic of Kenya on the unconstitutionality of the aforesaid provision of the Matrimonial Property Act is said to have acted in a manner that has denied, violated, infringed or threatened the Petitioners' constitutional guarantee despite having the constitutional mandate and obligation to respect, uphold and defend the Constitution of the Republic of Kenya.
6. This Honourable Court has jurisdiction to hear and determine the Petition herein under Article 23 of the Constitution.

B. BRIEF FACTS OF THE CASE

i) MATRIMONIAL PROPERTY ACT (MPA) 2013

1. The MPA is an Act of Parliament that provides for the rights and responsibilities of spouses in relation to Matrimonial property and for connected purposes.
2. The Petitioner, through its network of lawyers and female clients has received numerous concerns on certain provisions of the MPA and their constitutionality or otherwise in particular Section 7 to which, immediately upon its enactment, the Petitioner made known its concerns and objections.
3. **Section 7 of the MPA** provides that ‘ownership of matrimonial property vests in the spouses according to the contribution of either spouse towards its acquisition, and shall be divided between the spouses if they divorce or their Marriage is otherwise dissolved.’
4. The Petitioner avers that the provision of “according to the contribution of either spouse towards its acquisition” is contrary to **Article 45(3)** of the Constitution which states that: parties shall have equal rights at the time of marriage, during the marriage and at the dissolution of the marriage.
5. This provision further, infringes on the rights of married women to own property after the dissolution of a Marriage as they must prove their contribution towards its acquisition and while the definition of contribution has been expanded to include non-monetary contributions, the bulk of the property will belong to the spouse who has made monetary contributions and has proof of the same.
6. This legal provision leaves at a distinct disadvantage the married women who contribute to acquisition of their matrimonial properties but have no tangible proof of the same and serves to disenfranchise and disempower women economically.
7. The Petitioner avers that this provision will be used to deprive many married women of their fundamental rights to land and property contrary to Articles 40, 60 and 68 of the Constitution as the effect of the aforementioned provision has already resulted in judicial decisions contrary to the constitutional provision of 50:50 sharing of matrimonial property at the dissolution of the marriage.
8. The aforesaid provision has lend credence to *Echaria v Echaria* which enunciated that matrimonial property is to be distributed according to contribution, which must

be proved. This is contrary to the spirit of the Constitution which envisages equity and equality during marriage and after dissolution of the said marriage.

9. This provision is in stark contrast to **Section 10(2)** of the MPA which states that “any liability that was reasonably and justifiably incurred shall, if the property becomes matrimonial property be equally shared by the spouses, unless they otherwise agree.” Section 10(3) of the MPA states that parties to a marriage shall share equally any liability incurred during the subsistence of the marriage and reasonable and justifiable expenses incurred.
10. From the foregoing, as liabilities are to be equally shared, assets too must be equally shared at the dissolution of the marriage.
11. The aforesaid provision is a creation of the National Assembly who substantially amended the Bill despite objections that the same would create an unconstitutional provision. The Bill, which had been drafted in contemplation of Article 45(3) of the Constitution, previously read as follows:

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

C. RELEVANT PROVISIONS OF THE CONSTITUTION

1. Article 2 of the Constitution of the Republic of Kenya declares the Constitution as the supreme law of the Republic and that it binds all persons, public or private, and all state organs at both levels of government.
2. Article 2(4) of the Constitution declares any act or omission in contravention of the Constitution as invalid.
3. Article 2(6) provides that any convention ratified by Kenya shall form part of the law of Kenya under this Constitution
4. Article 3(1) of the Constitution of the Republic of Kenya obligates every person, public or private, to respect, uphold and defend the Constitution.
5. Article 10 of the Constitution of Kenya spells out the National Values and Principles of Governance which bind all state organs, state officers, public officers and all persons whenever any of them:

- a. Applies or interprets the Constitution;
 - b. Enacts, applies or interprets any law; or
 - c. Makes or implements public policy decisions.
6. Among the National Values and Principles of Governance under Article 10 of the Constitution of Kenya are; the rule of law, human dignity, human rights, non-discrimination, transparency and accountability.
 7. Article 19 of the Constitution of Kenya provides that the Bill of Rights is an integral part of Kenya's democratic state, and is the framework for social, economic and cultural policies.
 8. Article 20(1) of the Constitution provides that the Bill of Rights applies to all law and binds all State organs and all persons.
 9. Article 20(2) of the Constitution secures for every person an entitlement to enjoy the rights and fundamental freedoms in the Bill of Rights to the greatest extent consistent with the nature of the right or fundamental freedom.
 10. Article 20(3)(b) requires of this Court, in applying a provision of the Bill of Rights to adopt the interpretation that most favours the enforcement of a right or fundamental freedom.
 11. Article 27 of the Constitution provides *inter alia*, that:
 - a. Every person is equal before the law and has the right to equal protection and equal benefit of the law.
 - b. Equality includes the full and equal enjoyment of all rights and fundamental freedoms.
 - c. Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.
 - d. The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.
 - e. A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated in clause (4)."
 12. Article 28 of the Constitution guarantees for every person inherent dignity and the right to have that dignity respected and protected.
 13. Article 40 (1) of the Constitution guarantees that every person has the right, either individually or in association with others, to acquire or own property –
 - (a) Of any description; and

(b) In any part of Kenya.

40(2) Parliament - shall not enact a law that permits the State or any person –

(a) To arbitrarily deprive a person of property of any description or of any interest in, or right over, any property of any description, or;

(b) To limit, or in any way restrict the enjoyment of any right under this Article on the basis of any of the ground specified or contemplated in Article 27 (4).

14. Article 45(1) of the Constitution provides that the family is the natural and fundamental unit of the society and the necessary basis of social order and shall enjoy the recognition and protection of the state.

3) Parties to a Marriage are entitled to equal rights at the time of Marriage during the Marriage and at the dissolution of the Marriage.

15. Article 60 (1) provides that land in Kenya shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable, and in accordance with the following principles—(f) elimination of gender discrimination in law, customs and practices related to land and property in land.

16. Under Article 68(1) Parliament shall—(c) enact legislation— (iii) to regulate the recognition and protection of matrimonial property and in particular the matrimonial home during and on the termination of Marriage;

17. Article 259 of the Constitution requires that the Constitution of the Republic of Kenya is interpreted in a manner that:

a) Promotes its purposes, values and principles;

b) Advances the rule of law, and the human rights and fundamental freedoms in the Bill of Rights;

c) Permits the development of the law; and

d) Contributes to good governance.

D. VIOLATIONS OF RIGHTS AND FUNDAMENTAL FREEDOMS AS GUARANTEED UNDER THE CONSTITUTION, REGIONAL AND INTERNATIONAL LAW

i) THE MATRIMONIAL PROPERTY ACT 2013

a. **Section 7 of the MPA** provides that ownership of matrimonial property vests in the spouses according to the contribution of either spouse towards its acquisition, and shall be divided between the spouses if they divorce or their Marriage is otherwise dissolved.

- b. The provision of “according to the contribution of either spouse towards its acquisition”, is contrary to **Article 45(3)** of the Constitution which provides for parties to have equal rights at the time of Marriage during the Marriage and at the dissolution of the Marriage.
- c. This provision further, infringes on the rights of married women to own property after the dissolution of a Marriage as they must prove their contribution towards its acquisition and while the definition of contribution has been expanded to include non-monetary contributions, the bulk of the property will vest in the spouse who has made monetary contributions and has proof of the same.
- d. This legal provision leaves at a distinct disadvantage women who contribute to acquisition of their matrimonial properties but have no documentary proof of the same.
- e. This legal provision is in stark contrast to **Section 10 of the MPA** which states that **spousal liabilities shall be equally shared** unless otherwise agreed.
- f. This legal provision has already been used to deprive many married women of their fundamental rights to land and property contrary to Articles 40, 60 and 68 of the Constitution as the effect of the aforementioned provision has already resulted in judicial decisions contrary to the constitutional provision of 50:50 sharing of matrimonial property at the dissolution of the marriage.
- g. The aforesaid provision has lend credence to *Echaria v Echaria* which enunciated that matrimonial property is to be distributed according to contribution, which must be proved. This is contrary to the spirit of the Constitution which envisages equity and equality during marriage and after dissolution of the said marriage.
- h. The aforesaid provision is a creation of the National Assembly who substantially amended the Bill despite objections that the same would create an unconstitutional provision. The Bill, which had been drafted in contemplation of Article 45(3) of the Constitution, previously read as follows:

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

The fore stated provisions of the MPA have also violated the following regional and international treaties that Kenya has ratified and which, by virtue of Article 2(6) of the Constitution, forms part of the law of Kenya:

- i) The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol),
- ii) The African Charter on Human and Peoples Rights (Banjul Charter),
- iii) The International Covenant on Civil and Political Rights (ICCPR) and
- iv) The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW).

1. Article 7 (d) of the Maputo Protocol provides:

States Parties shall enact appropriate legislation to ensure that women and men enjoy the same rights in case of separation, divorce or annulment of Marriage. In this regard, they shall ensure that: d) in case of separation, divorce or annulment of Marriage, women and men shall have the right to an equitable sharing of the joint property deriving from the Marriage.

2. Articles 3 and 18(3) of the Banjul Charter provides:

- (1) *Every individual shall be equal before the law*
- (2) *Every individual shall be entitled to equal protection of the law*
- (3) *The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of women and the child as stipulated in international declarations and conventions.*

3. Article 26 of the ICCPR states:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

4. Articles 15 and 16 of CEDAW provides:

- (1) *States Parties shall accord to women equality with men before the law.*
- (2) *States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:*
 - (c) *The same rights and responsibilities during marriage and at its dissolution;*
 - (h) *The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.*

THIS PETITION is further supported by the affidavit of **CHRISTINE OCHIENG** and upon such other and/or further grounds as may be adduced at the hearing hereof.

E. PRAYERS

Your Lordship, in light of the foregoing constitutional, regional and international human rights violations, your Petitioner therefore humbly pray for:

- 1) A DECLARATION that section 7 of the MPA to the extent that it bases division of matrimonial property upon contribution, is invalid as it is in conflict, inconsistent and contravenes Articles 27,40, 45(3), 60(1) of the Constitution and is therefore null and void;
- 2) An order of MANDAMUS compelling the Respondent to publish a Statute Miscellaneous Amendment Act within thirty days of delivery of judgment deleting the aforesaid Section and inserting:
Subject to section 6(3), ownership of matrimonial property vests in the spouses in equal shares irrespective of the contribution of either spouse towards its acquisition, and shall be divided equally between the spouses if they divorce or their marriage is otherwise dissolved.
- 3) Costs of this Petition be granted to the Petitioner.
- 4) Any other order that the court may deem fit to grant.

DATED AT NAIROBI this 20th day of April 2016

WAMBUI NDEGWA & ASSOCIATES
ADVOCATES FOR THE PETITIONER

DRAWN AND FILED BY

Wambui Ndegwa & Associates
Advocates,
1st Floor Room 109, Summit House,
(Opposite Central Police Station)
University Way
P. O. Box 32852-00600,
NAIROBI

TO BE SERVED UPON

The Hon the Attorney General
State Law Office, Sheria House
NAIROBI

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
PETITION NO 164 OF 2016

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IN THE MATTER OF ARTICLES 20, 21, 22(1) and (2) & 23(1) and (3) OF THE
CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF THE CONTRAVENTION OF RIGHTS AND FUNDAMENTAL
FREEDOMS UNDER ARTICLES 2(4), 2(6), 10, 27, 28, 40(1) and (2), 45 (3), 60
(1)(a)& (f) & 68(c) (iii)&(vi) OF THE CONSTITUTION OF KENYA

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IN THE MATTER OF SECTION 7 OF THE MATRIMONIAL PROPERTY ACT 2013

BETWEEN

FEDERATION OF WOMEN LAWYERS KENYA
(FIDA-K)..... PETITIONER

AND

THE HON. ATTORNEY GENERAL..... RESPONDENT

SUPPORTING AFFIDAVIT

I, **CHRISTINE OCHIENG**, a female adult of sound mind and a resident of Nairobi County within the Republic of Kenya do hereby make oath on behalf of the Petitioner **FEDERATION OF WOMEN LAWYERS, KENYA (FIDA-Kenya)** and state as follows:

1. **THAT** I am the Executive Director of the Petitioner, FIDA-Kenya, herein, well versed with the facts in this Petition and therefore competent to swear this affidavit.

2. **THAT** FIDA-Kenya was established in 1985 and registered as a non- profit, non-partisan membership organization in 1993. The Petitioner is committed to the creation of a society that respects and upholds women's rights. (*Annexed hereto and marked "CO 1" is the Petitioner's registration.*)

3. **THAT** the Petitioner is a national organization with its Headquarters in Nairobi and branch offices in Kisumu and Mombasa.
4. **THAT** the Petitioner works towards ensuring the promotion of women's individual and collective power to claim their rights in all spheres of life, in a bid to guarantee that women are free from all forms of injustices based on their gender, sex, class, ethnic origin, physical disability, or religious beliefs.
5. **THAT** the Petitioner implements its vision and mission by offering quality legal services to indigent women including public interest litigation, creating awareness on gender and legal rights, conducting community-based human rights monitoring and documenting trends of rights violations, lobbying and advocating for reform of laws and policies that protect women's rights, and by monitoring the government's compliance with regional and international human rights obligations.
6. **THAT** through its Access to Justice Programme where *pro bono* legal services are offered, the Petitioner has represented women in cases of property rights, custody and maintenance of children, sexual and gender based violence. With specific relation to matrimonial property claims, FIDA Kenya handles about 1,200 women half yearly.
7. **THAT** on diverse periods prior to and after the promulgation of the Constitution in 2010, the Petitioner was engaged with other stakeholders in the drafting and submission of views to the Commission on the Implementation of the Constitution (CIOC) towards enactment of a substantive legislation that guides determination of Matrimonial Property.
8. **THAT** a Matrimonial Property Bill was indeed drafted and extensively debated upon by various stakeholders and the Petitioner was an active and eager proponent of its passage into law as initially drafted. **(Annexed hereto and marked "CO 2" is the Matrimonial Property Bill of 2013).**

9. **THAT** the Matrimonial Property Act (hereinafter "the Act") was subsequently enacted on 24th December 2013 as an Act of Parliament to provide for the rights and responsibilities of spouses in relation to matrimonial property and for connected purposes.
10. **THAT** I verily believe Section 7 of the Act contradict Articles 27 and 45 of the Constitution and Sections 4 of the same Act.
11. **THAT** Article 27(4) of the Constitution of Kenya that provides that 'the State shall not discriminate either directly or indirectly on any person on any ground including ... marital status' stands contravened in the Act's Section 7 that necessitates spousal interest on matrimonial property being limited to the contribution of either spouse towards its acquisition.
12. **THAT** further, the said section is in contravention of Article 45(3) Constitution of Kenya, which stipulates that parties shall have equal rights at the time of marriage, during the marriage and at the dissolution of the marriage stand contravened in the Act.
13. **THAT** while Section 4 of the Act stipulates *inter alia*that spouses have equal rights to acquire, administer, hold, control, use and dispose of property whether movable or immovable, to enter into a contract ; and to sue and be sued in her own name, this position is totally negated by the said section.
14. **THAT** the said Section 7 is also discriminatory and is in stark contrast to Section 10 of the MPA which states that spousal liabilities shall be equally shared unless otherwise agreed.
15. **THAT** through Article 2(6) Constitution of Kenya, the below mentioned international human rights instruments further cement the position of the illegality of the Section 7 of the Act.

16. **THAT** Article 7(d)(d) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, referred to as the Maputo Protocol, directs that States enact appropriate legislation that will allow women and men to enjoy equal rights at the time of separation or dissolution of their marriage and further that each will enjoy equal distribution of the matrimonial property attained.
17. **THAT** both these international instruments, Article 13 and 18(3) of the African Charter on Human and Peoples Rights, known as the Banjul Charter and Article 26 of the International Covenant on Civil and Political Rights (ICCPR) specifically address equality of every individual before the law and further provide that the State shall ensure the elimination of all forms of discrimination with the Banjul Charter specifically directing that the State provide such protection of women and children's rights against discrimination.
18. **THAT** Article 15 and 16 of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) clearly provides that 'Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women.
19. **THAT** Section 7 promotes discrimination and inequality of women with its existence further promoting the States reneging on its responsibility towards its citizens.
20. **THAT** the State, by further permitting the existence and implementation of the said Section, goes against the national principles, with specific reference to Article 10(2)(b).
21. **THAT** through our clients' attendance at our Nairobi, Kisumu and Mombasa branches, their plight and frustration in rightfully acquiring matrimonial property, which property they assisted in acquiring through various modes of contribution, has been recognized.

22. **THAT** the said section reverts spousal contribution to the discretion of the court, which position was well cured by the Constitution.
23. **THAT** there are courts of justice that are relying on this section to wrongfully distribute matrimonial property in unjustifiable and unexplained ratios to the detriment of women.
24. **THAT** the said section has become a stumbling block in the attainment of justice for our clients and other women within the Republic of Kenya, as they are now burdened with attempting to quantify in monetary terms various forms of contribution such as domestic work, companionship, maintenance of the matrimonial home and family business.
25. **THAT** the provision further entrenches discrimination of the woman's role in the family wherein domestic work and management of the matrimonial home, child care, farm work, management of family business or property are considered lesser forms of contribution.
26. **THAT** the need to justify contribution was never the spirit or intention of the Matrimonial Property Act, which position is bolstered by Articles 27(4), Article 45(3) Constitution of Kenya, Section 4, Section 10 of the Act and the various international human rights instruments.
27. **THAT** it is therefore in the interest of justice that above mentioned provision be declared null and void for being inconsistent with the Constitution, therefore unconstitutional and be deleted from the Act, to be replaced with the Section 7 as provided in the Matrimonial Property Bill, which wholly holds the position as intended.
28. **THAT** I swear this affidavit in support of the Petition and the prayers sought thereto.

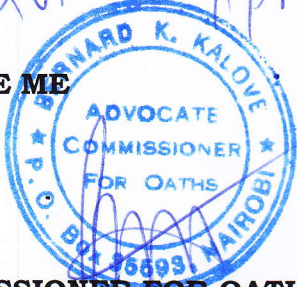
29. **THAT** all that I have deponed to herein is true to the best of my knowledge, and belief, save for information where otherwise stated.

SWORN at **NAIROBI** by the said)

CHRISTINE OCHIENG)

This 20th day of April 2016)

BEFORE ME)



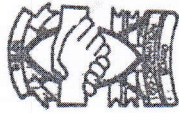
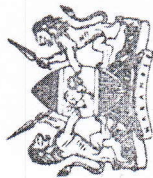
COMMISSIONER FOR OATHS)


.....

DEPONENT

DRAWN & FILED BY:

W. Ndegwa & Associates
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1st Floor Room 109 Summit House,
University Way (opp. Central Police Station)
P. O. Box 32852-00600,
NAIROBI



REPUBLIC OF KENYA
OP. 218/051/93132/90
OFFICE OF THE PRESIDENT

CERTIFICATE OF REGISTRATION

I, PROF. WILSON KIPNG'ENO KOECH, Chairman of the Non-Governmental Organizations Board, certify that the xxx FEDERATION OF WOMEN LAWYERS IN KENYA xxx has this day been registered under section 10 of the Non-Governmental Organizations Co-ordination Act as applied for.

Dated 11TH MARCH, 1993.

CPK 6216-300-9/2001

This is the Exhibit marked "CO-1" referred to in the annexed Affidavit / Declaration of Christine Achung sworn / declared before me this 20th day of April at 2016 in the Republic of Kenya
[Signature]
Commissioner for Oaths

[Signature]
W. K. KOECH.
Chairman of the Board

SPECIAL ISSUE

Kenya Gazette Supplement No. 96 (National Assembly Bills No. 12)



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KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2013

NAIROBI, 5th July, 2013

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24 JUL 2013
P. O. Box 10443 - 00100
NAIROBI, KENYA
TEL: 2719231 FAX: 2712694

This is the Exhibit marked "CO 2"
referred to in the annexed Affidavit / Declaration
of Chastine Odhiong
Sworn / Declared before me this 20th
day of April 2016 in the Republic of Kenya
[Signature]
Commissioner for Oaths

during the subsistence of the marriage; or
 (d) any other property acquired during the subsistence of the marriage.

(2) Despite subsection (1), trust property, including property held in trust under customary law, does not form part of matrimonial property.

(3) Despite subsection (1), the parties to an intended marriage may enter into an agreement before their marriage to determine their property rights.

(4) A party to an agreement made under subsection (3) may apply to the Court to set aside the agreement and the Court may set aside the agreement if it determines that the agreement was influenced by fraud, coercion or is manifestly unjust.

Ownership of matrimonial property.

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

(2) Despite subsection (1), a party to a marriage may apply to the Court for a determination of the matrimonial property rights of the spouse during the subsistence of the marriage and the court may make such a determination.

Property rights in polygamous marriages.

8.(1) If the parties in a polygamous marriage divorce or a polygamous marriage is otherwise dissolved, the—

(a) matrimonial property acquired by the man and the first wife shall be retained equally by the man and the first wife only, if the property was acquired before the man married another wife; and

(b) matrimonial property acquired by the man