

# Acquisition and Property Ownership by Married Couples in Kenya



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Married couples acquire property to sustain their livelihoods. **Acquisition and property ownership by married couples** is a booklet that guides a couple legally married to understand their rights and interest in property they own during the subsistence of marriage and after the marriage.

**Spouse** – husband or wife

## A. Acquisition of property

The man and the wife can buy property separately or jointly as spouses. Where the property is bought by either the man or woman separately, then that is not matrimonial property.

Where the property is acquired jointly, or for the benefit of the family, or the other spouse improves it, that property is matrimonial property.

The husband and the wife each has equal right to; Acquire, manage, use, and dispose any property.

Where either spouse accrued any liability before marriage, the other spouse is not liable, and where the property is inherited or acquired before marriage, it is not part of the matrimonial property.

## B. Matrimonial Property

- i. The home or homes
- ii. Household goods and other goods in the home
- iii. Property jointly acquired during the marriage.
- iv. Property held in trust for another person who is not a spouse is not matrimonial property.
- v. Spouses are free to agree before marriage what is matrimonial property or not. This agreement is called a *prenuptial agreement*. A court can set aside such an agreement if it was influenced by fraud or coercion or if the terms are deemed unjust.

- vi. Matrimonial property is owned by each person according to their **contribution** and not equally. **“Contribution”** means monetary and non-monetary contribution including-domestic work and management of the matrimonial home; child care; companionship; management of family business or property and farm work.
- vii. Liabilities incurred during marriage for the benefit of the home are shared equally.
- viii. Courts have considered property acquired by way of inheritance as part of matrimonial property if acquired during the marriage.
- ix. Where a spouse intends to use matrimonial property for personal gain or engage a third party, then the other partner must give consent/agree to such use in writing before the transaction.
- x. In a polygamous setting, matrimonial property is determined by the time of marriage and contribution as follows;
  - a. the husband and the first wife share the property according to contribution from the time they were married.
  - b. the husband, the first wife and the second wife share the property according to contribution from the time the second wife was married after the property acquired by the first and the husband has been shared.

## **C. Dispute Resolution**

Where there is a dispute on the division of the matrimonial property, the couple are free to file the matter in court for determination. Muslims may apply Islamic Law on matters relating to matrimonial property.

## **D. Cohabiting Partners**

Matrimonial property does not arise in the instance of cohabiting partners who have not formalized their union. This Matrimonial Property Act applies to marriages that have been registered.





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