



ROBA & ASSOCIATES
A Broader Perspective

DEBUNKING THE MYTH ON INHERITED PROPERTY AS PART OF MATRIMONIAL PROPERTY



Covered in this legal Alert:

The following discourse highlights the existing thin line on inherited property in matrimonial disputes...

Inherited Property rights

BY VICTOR NGARUIYA, RESEARCHER

In a move that sought to streamline the administration of succession matters in Kenya, the Law of Succession (Amendment) Bill, 2019 had been proposed to redefine the categories of persons who could inherit the deceased's person's property. On 17th November 2021, the President assented to the Bill and the Bill was adopted into an Act of Parliament pursuant to Special Issue Kenya Gazette Supplement No. 211 (Act No.11). However, to the shock of many, only one of the amendments under the Law of Succession (Amendment) Act was retained under the Special Issue Kenya Gazette. None of the other amendments came into effect. In addition, more challenges will be seen in another Alert on the plights of cohabiting partners in the arduous matrimonial proceeding causes in Kenya.

INHERITED PROPERTY

Inheritance refers to the devolution of property on an heir or heirs upon the death of the owner. The term inheritance at times designates to the property itself. On the other hand, inherited property is property that is acquired from someone who has died.

MATRIMONIAL PROPERTY

Matrimonial property is defined in **section 6 of the Matrimonial Property Act** as the matrimonial home, household goods, or any other movable and immovable property jointly owned and acquired during the subsistence of a marriage by spouses. **Section 7** of the Act further 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.

Therefore, an inference can be drawn that the yardstick for determining what is matrimonial property is through its period of acquisition. It's obvious that inherited property that is acquired before marriage does not involve contributions of the other spouse.

In the case of **T.M.W. vs F.M.C (2018) eKLR**, Nyakundi J. opined 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."

POSITION OF THE LAW ON INHERITED PROPERTY ACQUIRED BEFORE, DURING AND AFTER MARRIAGE

The general rule under **Section 5 of the Matrimonial Property Act** is that the interest of any person in any immovable or movable property acquired or inherited before marriage shall not form part of the matrimonial property. However, this rule is not absolute, it is subject to limitations such as where one spouse makes a contribution towards the development of that property, whether the property is matrimonial or not, that spouse acquires some beneficial or equitable interest on that property.

BENEFICIAL INTEREST ACQUIRED ON INHERITED PROPERTY

These interests have been anchored under **Section 9 of the Matrimonial Property Act** which provides that 'Where one spouse acquires property before or during the marriage and the property acquired during the marriage does not become matrimonial property, but the other spouse makes a contribution towards the improvement of the property, the spouse who makes a contribution acquires a beneficial interest in the property equal to the contribution made

From the language of the Matrimonial Property Act, there is no provision which excludes inherited property from the definition of matrimonial property. Indeed, section 5 of the Act impliedly excludes it in the definition. According to **section 5**, the only time such property will not form part of matrimonial property is where the inheritance was before the marriage...".

BENEFICIAL INTEREST CONT..

The net effect of the foregoing is that any property acquired during the subsistence of the marriage, including that which is inherited forms part of matrimonial property. The only time that inherited property is excluded from matrimonial property is if it was acquired before marriage.

CONCLUSION

In a nutshell, it is clear that an inherited property is not necessarily excluded from being matrimonial property unless the inheritance was acquired before the marriage. However, Section 9 of the said Act provides for acquisition of interest in property which is not matrimonial by contribution.

Therefore, even where the inherited property was acquired before marriage and therefore does not qualify as matrimonial property, if it is shown that the other spouse made contribution towards the improvement of the same property, that spouse acquires a beneficial interest in the property equal to the contribution made.

CONTACT INFORMATION

Head Quarters

Madonna House, Second Floor, Suite
206.Westlands Road

Email

info@robaandassociates.com

Phone

+254 780 747 574

Website

www.robaandassociates.com

Open

Mon-Sat 0800-1800hrs