

## **THE MATRIMONIAL PROPERTY BILL, 2011**

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## **THE MATRIMONIAL PROPERTY BILL, 2011**

### **A Bill for**

**An Act of Parliament to make provision for the rights of spouses in relation to matrimonial property and for connected purposes.**

**ENACTED by the Parliament of Kenya as follows-**

### **PART I - PRELIMINARY**

Short title and commencement.

**1.** This Act may be cited as the Matrimonial Property Bill, 2011 and shall come into operation fourteen days after publication in the Gazette.

Interpretation.

**2.** 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; and
- (c) companionship.

“matrimonial home” means any property that is owned or leased by one or both spouses and occupied by the spouses as their family home;

“matrimonial property” has the meaning assigned to it in section 7;

"spouse" means a person to whom a person is married or is presumed to be married under a system of law recognized in Kenya.

**PART II- GENERAL PRINCIPLES**

- Equal status of married women and men.
- 3.** Notwithstanding any other law a married woman has the same right as a married man—
- (a) to acquire, hold and dispose of property whether movable or immovable;
  - (b) to contract; and
  - (c) to sue, and to be sued.
- Capacity of a spouse to acquire separate property.
- 4.** Subject to this Act, a spouse in any marriage has the capacity to acquire his or her own separate property during the subsistence of the marriage.
- Equal status of wives.
- 5.** Subject to any other written law, where a man has two or more wives, each wife shall enjoy equal rights, be subject to equal liabilities and have equal status in law.
- Rights and liabilities of a married woman.
- 6.** Subject to section 7, the interest of any person in any immovable or movable property acquired before a marriage shall not be affected by the marriage

**PART III- MATRIMONIAL PROPERTY**

- Meaning of matrimonial property.
- 7. (1)** For the purposes of this Act, matrimonial property means -
- (a) the matrimonial home or homes;
  - (b) household goods and effects in the matrimonial home or homes;
  - (c) immovable property, owned by either spouse which provides the basic income for the sustenance *of* the family;
  - (d) any other property acquired during the subsistence of a marriage, which

the spouses expressly or impliedly agree to be matrimonial property.

(2) Notwithstanding subsection (1), any property held by a spouse as trust property whether acquired by way of inheritance or otherwise, shall not form part of matrimonial property.

(3) Subsection (1) does not apply where spouses have by agreement entered into before or during the marriage, otherwise determined their property rights.

Ownership of matrimonial property.

**8.** Ownership of matrimonial property, shall be deemed to vest in the spouses in equal shares irrespective of the contribution of either of them towards the acquisition thereof, and shall be divided accordingly upon the occurrence of divorce or dissolution of the marriage provided that in appropriate circumstances a determination can be made during the subsistence of the marriage.

Liability on the property acquired before marriage.

**9.** Any liability incurred by a spouse before marriage relating to property shall after marriage remain the liability of the spouse who incurred it, except that if the property becomes matrimonial property under section 7 ,the liability shall be equally shared by the spouses ,unless they agree otherwise.

Acquisition of interest in property by contribution.

**10.** Where one spouse acquires property whether before or during the marriage and the property is not and does not become matrimonial property, but the other spouse makes a contribution towards the improvement of the property, the spouse who makes a contribution shall acquire a beneficial interest in the property equivalent to the contribution made.

Property rights in polygamous marriages.

**11.** (1) Where a man has more than one wife in a polygamous marriage, for the purposes of section 8-

(a) matrimonial property acquired by the man and the first wife shall be owned equally by the man and the first wife only, if the property was

acquired before the man married the second wife.

- (b) matrimonial property acquired by the man after the man marries a second wife shall be regarded as owned equally by the man, the first wife and the second wife, and the same principle shall be applied to any subsequent wife or wives.

(2) Notwithstanding paragraph (b) of subsection (1), where it is clear either by agreement or through the conduct of the parties that any wife has her separate matrimonial property with the husband, then any such wife shall own that matrimonial property equally with the husband without the participation of the other wife or wives.

Special provisions  
relating to  
matrimonial  
property.

**12** (1) No estate or interest in any matrimonial property shall during the subsistence of the marriage and without the consent of both spouses, be alienated, whether by way of sale, gift, lease, mortgage or otherwise, and either spouse shall be deemed to have an interest in such property capable of protection by caveat, caution or otherwise under any law for the time being in force relating to the registration of title to land or of deeds.

(2) A spouse shall not be liable during the subsistence of the marriage to be evicted from the matrimonial home by or at the instance of the other spouse except in accordance with an order of a court.

(3) Subject to subsection (2), a spouse shall not be liable to be evicted from the matrimonial home by any person except-

- (a) on the sale of any estate or interest in the matrimonial home in execution of a decree;
- (b) by a trustee in bankruptcy; or
- (c) by a mortgagee or chargee in exercise of a power of sale or other remedy given under any law.

#### **PART IV- SEPARATE PROPERTY**

Separate property of husband and wife. **13.** Subject to this Act and any agreement to the contrary, marriage shall not affect the ownership of any property to which either the husband or the wife may be entitled or affect the right of either spouse to acquire, hold or dispose of any such property.

Presumptions as to property acquired during marriage. **14.** Where, during the subsistence of a marriage, property is acquired—

(a) in the name of one spouse, there shall be a rebuttable presumption that the property belongs absolutely to that spouse absolutely;

(b) in the names of the spouses jointly, there shall be a irrebuttable presumption that their beneficial interests therein are equal.

Gifts between spouses. **15.** Where, during the subsistence of a marriage, either spouse gives any property to the other as a gift there shall be a rebuttable presumption that the property thereafter belongs absolutely to the donee.

No liability for antecedent debts of a spouse. **16.** No spouse shall be liable solely by reason of marriage for any debt contracted by the other spouse prior to their marriage.

#### **PART V- JURISDICTION AND PROCEDURE**

Action for declaration of rights to property **17** (1) A person may apply to a court for a declaration of rights to any property that is contested as between that person and a spouse or former spouse of the person.

(2) An application under subsection (1) –

(a) shall be brought in compliance with the Civil Procedure Act, in accordance with such procedure as may be prescribed by the Rules Committee under section 18; and

- (b) may be made as part of a petition in a matrimonial cause;
- (c) may be brought notwithstanding that no petition has been brought under any law relating to matrimonial causes.

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Rules  
Cap 21

**18.** The Rules committee established under section 81 of the Civil Procedure Act shall make rules of court regulating any matter of practice or procedure under this Act.

Cessation of  
application of  
Married Women  
Property Act.

**19.** The Married Women Property Act shall cease to extend or apply to Kenya.