CM ADVOCATES LLP



WHAT RECENT COURT DECISIONS MEAN FOR FAMILY WEALTH

INTRODUCTION

Recent decisions of Kenya's superior courts have clarified the legal principles governing matrimonial property rights, family business ownership, succession planning and family wealth preservation.

The decisions in ***Joseph Ombogi Ogentoto v Martha Bosibori Ogentoto & Federation of Women Lawyers (FIDA Kenya) [2023] KESC, PNN v ZWN [2019] eKLR, GKW v RNK [2017] KECA 753 (KLR)*** and ***Joyce Kimosop v Eliud Kipchoge Sugut & 4 Others [2026] KEHC 2422 (KLR)*** collectively underscore an increasingly important reality, that family wealth should not be left to assumptions, informal arrangements or undocumented understandings.

The emerging judicial landscape reflects a broader shift from ownership to stewardship and from reactive dispute resolution to proactive wealth preservation. Families, entrepreneurs, family business owners and globally mobile individuals are increasingly required to adopt sophisticated structures capable of protecting wealth, preserving family harmony and facilitating orderly inter-generational succession.

A) THE SHIFT FROM OWNERSHIP TO WEALTH STEWARDSHIP

One of the most significant developments in modern private wealth planning is the transition from a focus on ownership to a focus on stewardship. Historically, wealth planning was primarily concerned with the acquisition and accumulation of assets. Property was purchased, businesses were established and investments were acquired. Often, however, insufficient attention was given to governance, succession, family expectations or the documentation of beneficial ownership arrangements.

Recent judicial decisions demonstrate that ownership alone may not be sufficient to preserve wealth. Courts are increasingly examining contribution, beneficial interests, governance arrangements and succession intentions when determining disputes involving family wealth.

The main question is therefore no longer simply who owns an asset, but how wealth is governed, protected, preserved and transferred across generations. This shift reflects the reality that sustainable wealth preservation requires stewardship rather than ownership.

B) MODERN FAMILY STRUCTURES REQUIRE MODERN WEALTH PLANNING

Family structures have evolved significantly and wealth planning should evolve alongside them. Traditional succession planning models were largely designed around the conventional nuclear family. Today's families are more complex and may include blended families, second marriages, polygamous unions, family businesses, internationally mobile family members and assets located across multiple jurisdictions.

C) WHAT THE COURTS ARE REALLY SAYING

The emerging judicial trend is remarkably consistent. Kenyan courts are encouraging families to move away from assumptions and towards intentional planning. The courts are increasingly emphasizing evidence, documentation, governance and clearly structured ownership arrangements as essential components of wealth preservation.

i. Marriage Alone Does Not Create Automatic Proprietary Rights

In ***Joseph Ombogi Ogentoto v Martha Bosibori Ogentoto & Federation of Women Lawyers (FIDA Kenya) [2023] KESC***, the Supreme Court clarified that Article 45(3) of the Constitution guarantees equality of rights within marriage but does not automatically create equal proprietary rights over matrimonial property. Ownership rights must be established through evidence and legal principles rather than assumptions arising solely from the existence of a marriage. The court further clarified that equality in a marriage means that all parties have same rights upon dissolution of the marriage based on their contribution.

The implication of this is that families should ensure that ownership structures and beneficial interests are properly documented, legally protected and aligned with broader succession objectives.

ii. Contribution Remains the Foundation of Matrimonial Property Claims

The courts in ***Joseph Ombogi Ogentoto v Martha Bosibori Ogentoto & Federation of Women Lawyers (FIDA Kenya) [2023] KESC*** and ***PNN v ZWN [2017] KECA 753 KLR***, have reaffirmed that contribution towards the acquisition and preservation of matrimonial property is not limited to direct financial contributions. In determining each spouse's entitlement to matrimonial property, courts will consider both monetary and non-monetary contributions made during the marriage.

Non-monetary contributions can take many forms, including homemaking, raising children, managing the household, working in a family business, overseeing family investments, farm work and providing companionship and domestic support that enables the other spouse to generate income or acquire assets. The courts have increasingly recognized that these contributions play a vital role in wealth creation and should not be overlooked simply because they do not involve direct financial investment.

For families, particularly those with businesses, significant property holdings or complex investment structures, this underscores the importance of maintaining clear and accurate records relating to the acquisition, management and preservation of assets. Documents such as property purchase records, loan agreements, business ownership records, financial statements, capital contribution records, employment records and correspondence relating to family businesses can be invaluable in demonstrating how wealth was accumulated and the role each spouse played in its growth and preservation.

iii. Equality Does Not Necessarily Mean Equal Division

The recognition of both monetary and non-monetary contributions does not mean that matrimonial property will be divided equally between spouses upon divorce or separation. Kenyan courts have consistently held that the division of matrimonial property is not based on a rigid 50:50 formula, but rather on the principle of fairness, taking into account the nature and extent of each spouse's contribution and the specific circumstances of the case.

For families with businesses and individuals with significant assets, this highlights the importance of proactive planning. Too often, spouses assume that ownership structures, inheritance plans or family business arrangements will operate as intended without considering the potential impact of matrimonial property claims. These assumptions can create uncertainty and lead to costly disputes when relationships break down or succession proceedings occur.

iv. Family Businesses Are Not Beyond Judicial Scrutiny

In ***GKW v RNK [2025] KECA 1475 (KLR)***, the case involved property registered in the name of a company. The wife sought to join two companies to the

matrimonial property proceedings, arguing that they were vehicles through which the family's assets were held. The matrimonial home in which the couple had lived for over twenty years was registered in the name of one of the companies. The husband opposed the application, relying on the principle that a company is a separate legal entity distinct from its shareholders. However, the Court held that corporate structures cannot always be used to shield assets from matrimonial property claims. Where a company is controlled by one or both spouses and is effectively holding family assets, the court may look beyond the corporate structure and lift the corporate veil to determine the true beneficial ownership of the property.

The decision in ***GKW v RNK*** serves as an important reminder that simply placing assets in a company's name will not necessarily protect them from scrutiny in matrimonial property proceedings. While the principle of separate legal personality remains a cornerstone of company law, courts are prepared to look beyond corporate structures where there is evidence that a company is being used to hold what is, in substance, family or matrimonial property.

D) FAMILY TRUSTS

Family Trusts have evolved from traditional estate planning vehicles into sophisticated governance structures capable of preserving wealth across generations. The most successful families increasingly use trusts not merely to transfer assets upon death but to establish a framework through which wealth can be managed, protected and distributed over time.

For blended families, second marriages and polygamous family structures, trusts often provide an equitable and transparent mechanism for balancing competing interests while preserving family harmony. Properly structured trusts can enhance asset protection, facilitate succession planning, preserve family businesses and support long-term inter-generational wealth transfer.

E) THE RISING IMPORTANCE OF PRE-NUPTIAL AND POST-NUPTIAL AGREEMENTS

Pre-Nuptial and Post-Nuptial Agreements are increasingly gaining traction as prudent wealth preservation and governance instruments. These agreements promote transparency, certainty and informed decision making before and after marriage. They provide a framework for addressing ownership of inherited wealth, family businesses, future acquisitions and succession expectations before disputes arise.

In ***FZA v RB [2025]***, the wife sought a declaration that a villa in Kilifi, which served as the couple's matrimonial home, and an apartment in Malindi constituted matrimonial property and that she was entitled to a share of both properties. The husband relied on a prenuptial agreement which expressly provided that property acquired by either party before the marriage would remain that party's separate property and would not be subject to claims upon dissolution of the marriage. The Court upheld the validity of the prenuptial agreement and found that although the Kilifi villa qualified as a matrimonial home, the agreement clearly excluded the wife from claiming an interest in the property. Accordingly, her claim was unsuccessful.

This highlights the importance of marital property agreements as wealth preservation and estate planning tools. Whether entered into before marriage through a prenuptial agreement or during marriage through a postnuptial agreement, such arrangements can help couples clearly define ownership rights, manage expectations regarding assets and provide greater certainty in the event of divorce, separation or succession disputes.

F) FAMILY GOVERNANCE

One of the most important lessons emerging from both international experience and recent judicial developments is that wealth preservation is fundamentally a governance issue. Research consistently demonstrates that family wealth is more often lost through governance failures and family conflict than through investment losses. Leading families increasingly adopt Family Constitutions, Family Charters, Family Councils and Family Employment Policies to establish decision making structures that preserve family values and facilitate orderly succession.

CONCLUSION

The lesson emerging from recent jurisprudence is that wealth preservation should not be viewed as a single transaction, document or event. Rather, it is a continuous and deliberate process that requires legal, governance, tax and succession planning tools to operate together within a coherent framework.

As courts continue to clarify the legal treatment of matrimonial property, family businesses and inherited wealth, families are increasingly recognizing the importance of proactive planning. The most successful wealth preservation strategies are therefore those that are reviewed regularly, adapted to changing circumstances and aligned with the family's long term objectives. In an era of evolving legal and commercial

realities, preserving wealth is not simply about protecting assets, but it is about creating a sustainable framework that enables families and businesses to thrive across generations.

HOW WE CAN ASSIST

Through the WELL Practice (Wealth, Estate, Legacy & Lifestyle) and the International Family Advisory Unit (IFA), CM Advocates LLP provides integrated, internationally aligned advisory services covering Family Trust Structuring, Multi-Trust and Dynasty Planning, Matrimonial Property Planning, Pre and Post-Nuptial Agreements, Family Governance Frameworks, Family Constitutions, Family Business Succession Planning, Cross-Border Wealth Planning, Global Mobility and Family Relocation Advisory, Succession and Probate Planning, Asset Protection Structures and Inter-Generational Wealth Transfer Strategies.

Our multidisciplinary approach combines expertise in private wealth, family law, succession planning, immigration and cross-border advisory services to deliver seamless solutions for families, entrepreneurs, family businesses and globally mobile individuals. We combine legal precision with commercial strategy to help clients preserve wealth, protect beneficiaries and secure enduring family legacies.

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