

## **SPECIAL ISSUE**

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**REPUBLIC OF KENYA**

# **KENYA GAZETTE SUPPLEMENT**

**NATIONAL ASSEMBLY BILLS, 2013**

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**NAIROBI, 5th July, 2013**

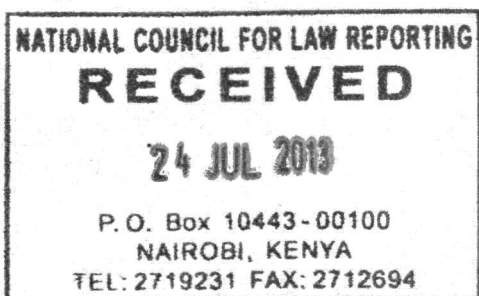
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# THE MATRIMONIAL PROPERTY BILL, 2013

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**THE MATRIMONIAL PROPERTY BILL,****2013****A Bill for**

**AN ACT of Parliament to provide for the rights and responsibilities of spouses in relation to matrimonial property and for connected purposes**

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

**PART I—PRELIMINARY**

Short title.

**1.** This Act may be cited as the Matrimonial Property Act, 2013.

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;
- (c) companionship;
- (d) management of family business or property;  
and
- (e) farm work;

“family business” means any business which—

- (a) is run for the benefit of the family by both spouses or either spouse; and
- (b) generates income or other resources wholly or part of which are for the benefit of the family;

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

“matrimonial property” has the meaning assigned to it in section 6;

“spouse” means a husband or a wife.

## **PART II—GENERAL PROVISIONS**

3. A person who professes the Islamic faith shall be governed by Islamic law in all matters relating to matrimonial property.

Application of  
Islamic law.

4. Despite any other law, a married woman has the same rights as a married man—

Equal status of  
spouses.

- (a) to acquire, administer, hold, control, use and dispose of property whether movable or immovable;
- (b) to enter into a contract; and
- (c) to sue and be sued in her own name.

5. Subject to section 6, the interest of any person in any immovable or movable property acquired before marriage shall not form part of the matrimonial property.

Rights and  
liabilities of a  
person.

## **PART III—MATRIMONIAL PROPERTY**

6.(1) For the purposes of this Act, matrimonial property means—

Meaning of  
matrimonial  
property.

- (a) the matrimonial home or homes;
- (b) household goods and effects in the matrimonial home or homes;
- (c) any other immovable and moveable property owned by both or either spouse and acquired

- 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

after the man marries another wife shall be regarded as owned by the man and the other wives taking into account any contributions made by the man and each of the wives.

(2) Despite subsection (1)(b), where it is clear by agreement of the parties that a wife shall have her matrimonial property with the husband separate from that of the other wives, then any such wife shall own that matrimonial property equally with the husband without the participation of the other wife or wives.

9. 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.

Acquisition of interest in property by contribution.

10.(1) Any liability incurred by a spouse before the marriage and relating to the property shall, after marriage, remain the liability of the spouse who incurred it.

Spousal liability.

(2) Despite subsection (1), 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.

(3) Parties to a marriage shall share equally any—

(a) liability incurred during the subsistence of the marriage; or

(b) reasonable and justifiable expense incurred for the benefit of the marriage.

11. During the division of matrimonial property between and among spouses, the customary law of the communities in question shall, subject to the values and principles of the Constitution, be taken into account

Consideration of customary law principles.

including—

- (a) the customary law relating to divorce or dissolution of marriage;
- (b) the principle of protection of rights of future generations to community and ancestral land as provided for under Article 63 of the Constitution; and
- (c) the principles relating to access and utilization of ancestral land and the cultural home by a wife or wives or former wife or wives.

Special provisions relating to matrimonial property.

12. (1) An estate or interest in any matrimonial property shall not, during the subsistence of a monogamous marriage and without the consent of both spouses be alienated in any form, whether by way of sale, gift, lease, mortgage or otherwise.

(2) A spouse in a monogamous marriage, or in the case of a polygamous marriage, the man and any of the man's wives, have an interest in matrimonial 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.

(3) A spouse shall not, during the subsistence of the marriage, be evicted from the matrimonial home by or at the instance of the other spouse except by order of a court.

(4) Subject to subsection (3), a spouse shall not 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.

(5) The matrimonial home shall not be mortgaged or leased without the written and informed consent of both spouses.

#### PART IV— SEPARATE PROPERTY

13. Subject to this Act and any agreement between the spouses before the marriage, marriage does not affect the ownership of property other than matrimonial property to which either spouse may be entitled, or affect the right of either spouse to acquire, hold or dispose of any such property.

Separate property of spouses.

14. Where matrimonial property is acquired during marriage—

Presumptions as to property acquired during marriage.

- (a) in the name of one spouse, there shall be a rebuttable presumption that the property is held in trust for the other spouse; and
- (b) in the names of the spouses jointly, there shall be rebuttable presumption that their beneficial interests in the matrimonial property are equal.

15. Where a spouse gives any property to the other spouse as a gift during the subsistence of the marriage, there shall be a rebuttable presumption that the property thereafter belongs absolutely to the recipient.

Gifts between spouses.

16. A spouse is not liable, solely by reason of marriage, for any personal debt contracted by the other spouse prior to their marriage.

No liability for antecedent debts of a spouse.

#### PART V— JURISDICTION AND PROCEDURE

17. (1) A person may apply to a court for a declaration of rights to any property that is contested

Action for declaration of rights to property.



between that person and a spouse or a former spouse of the person.

(2) An application under subsection (1)—

(a) shall be made in accordance with such procedure as may be prescribed;

(b) may be made as part of a petition in a matrimonial cause; and

(c) may be made notwithstanding that a petition has not been filed under any law relating to matrimonial causes.

Provisions on  
delegated powers  
Cap 21.

**18.**(1) The Rules committee established under section 81 of the Civil Procedure Act shall make rules to regulate any matter of practice or procedure under this Act.

(2) Without prejudice to the generality of subsection (1), such rules may prescribe—

(a) the procedure to be followed and the forms to be used under this Act;

(b) the time within which documents are to be filed and served under this Act.

Cessation of  
application of  
Married Women  
Property Act.

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

## **MEMORANDUM OF OBJECTS AND REASONS**

This Bill, which has been submitted to the Committee by the Attorney-General, seeks to cater for matrimonial property disputes in Kenya. The Bill provides for the rights and responsibilities of spouses in relation to matrimonial property.

**Part II** of the Bill states the general principles to be applied in matrimonial matters. These principles include equal legal status of men and women in marriage, the recognition of the capacity of either spouse to acquire separate property during the subsistence of the marriage. The Part further provides that persons professing the Islamic faith shall be governed by Islamic law in all matters relating to matrimonial property.

**Part III** of the Bill defines matrimonial property and also sets out the law and procedures applicable thereto. The Part provides that matrimonial property means the matrimonial home, household goods and effects in the matrimonial home, immovable property owned by either spouse which provides basic sustenance for the family and any other property acquired during the subsistence of the marriage which the spouses expressly or impliedly agree to be matrimonial property. The Part further states that matrimonial property shall be deemed to vest in the spouses in equal shares regardless of the contribution of either of them towards the acquisition thereof. The Part also provides that no estate or interest in any matrimonial property shall be alienated in any manner without the prior consent of both spouses and that neither spouse shall be liable to be evicted from the matrimonial homes except in accordance with a court order.

**Part IV** of the Bill provides for separate property during the subsistence of a marriage. The Part provides that, marriage shall not affect the ownership of any property to which either spouse may be entitled to separately. The Part further stipulates that where property is acquired in the name of one spouse, there shall be a rebuttable presumption that the property belongs absolutely to that spouse but where property is acquired in the names of the spouses jointly, there shall be a rebuttable presumption that their beneficial interests therein are equal.

**Part V** of the Bill provides for matters relating to jurisdiction and procedure in matrimonial matters. The Part provides that a person may apply to a court for a declaration of rights to any property that is contested

between spouses or former spouses. The Part further empowers the Rules Committee established under the Civil Procedure Act, Cap.21, Laws of Kenya, to make Rules concerning any matter of practice or procedure under the Act. The Part also specifies that upon the enactment and the coming into operation of the Act, the Married Women Property Act shall cease to extend or apply in Kenya.

The Bill does not concern county governments.

The enactment of this Bill will not occasion additional expenditure of public funds.

Dated the 20th June, 2013.

SAMUEL CHEPKONGA,  
*Chairperson,*  
*Committee on Justice and Legal Affairs.*