Appellant Submissions Distinguishing Equal Marital Rights from Automatic Half Shares

Educational sample 144 | Nairobi

Educational reconstruction from a reported Kenyan judgment. This is newly drafted text, not an original court filing and not a matter handled by our team. Identifying details are replaced with bracketed fields. Verify the facts, current law, jurisdiction and court directions before signing, swearing or filing.

Reconstructed formal document

REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

PETITION OR APPLICATION NO [reference]

[APPELLANT OR APPLICANT] v [RESPONDENT]

WRITTEN SUBMISSIONS

1. Article 45(3) protects equal rights at marriage, during marriage and at dissolution. The issue is how that equality interacts with evidence of contribution to the particular assets.

2. The Appellant contends that an allocation must be reasoned from proved direct and non-monetary contributions. Registration and wage income are relevant but should not be treated as the only forms of contribution.

3. The disputed KES 200,000 loan should be addressed through the existing evidence of borrowing, transfer and use. An allegation in argument cannot replace the trial record.

4. The law applicable to the earlier proceedings must be distinguished from the legislation now governing new claims. The repeal of the historical filing statute does not itself determine the merits of the old appeal.

5. The Appellant seeks a contribution-based reassessment within the certified issues. The source rejected the appeal because the equal allocation was reasonable on the particular evidence.

DATED at [place] on [date]. Signed [party or advocate]. DRAWN AND FILED BY [name and address for service]. TO BE SERVED UPON [each affected party and address].

Use and evidence notes

Put evidence in the admitted record and identify page references for every material factual proposition. Submissions do not introduce evidence. Check the Court’s directions on filing, length, authorities and service. Address jurisdiction before merits, answer the opponent’s actual objection and state the requested disposition. If the source argument failed, explain why rather than describing it as a successful precedent.

Authorities and record references: [authority and proposition]; [relevant admitted document and page]; [court direction governing this filing].

Source and procedural limits

Former spouses disputed a home and rental units in Nairobi. The wife relied on monetary and domestic contributions, including a contested KES 200,000 construction loan. The High Court awarded a smaller share; the Court of Appeal divided the relevant property equally. The Supreme Court considered a certified question about contribution, equality and applicable law.

The Supreme Court dismissed the appeal and upheld equal division on the particular evidence, with costs against the appellant. Article 45(3) does not prescribe an automatic equal share of every matrimonial asset. The Matrimonial Property Act 2013 was not retrospectively applied to the earlier proceedings.

Constitution Articles 45(3) and 163(4)(b); evidence of direct and non monetary contribution; distinction between equal marital rights and property allocation. The old originating summons relied on repealed legislation. Use current legislation and procedure for a new claim.

[2023] KESC 4 (KLR) — 27 January 2023. Original judgment: https://supremecourt.judiciary.go.ke/wp-content/uploads/2025/01/Supreme-Court-Law-Reports-2023-Vol-1.pdf#page=666

The original decision may identify participants. The specimen replaces their identifying details. A source decision is not proof that a draft was filed, that an allegation succeeded, or that the same result will follow in another case.