

As a spouse, do you know your rights to matrimonial property?

[Matrimonial property](#) has for a long time been a controversial topic of discussion especially on the issue of contribution towards obtaining it.



Under Kenyan law the spouse in whose name the title to matrimonial property is registered holds it in trust for the unregistered spouse. As such, the spouse whose name is not registered on the title has a beneficial interest over the property which overrides all other interests over that property.

The implication of a spouse having beneficial interest in property is that the consent of the spouse is required for all transactions relating to the property. Where such consent is not obtained the transaction can be challenged in court. The Court of Appeal in a recent decision in **Civil**

Appeal No. 262 of 2004 cited the failure by a husband to obtain the consent of his wife to the use of matrimonial property to secure a loan as the reason to nullify a loan transaction and set aside the sale of the matrimonial property by the bank. The court in doing so recognized that the spouse had a beneficial interest in the property in question although her name did not appear on its title.

In the High Court sitting in Kisumu in **Matrimonial Cause No.4 of 2017**, the Court found that the wife had beneficial interest in matrimonial property which her husband had sold without the wife's consent and therefore granted a temporary injunction to preserve it pending the determination of the contribution of each party and a determination of whether the wife was entitled to any compensation.

To avoid disagreements over the ownership of property after getting married, the two people intending to get married could make an agreement over property ownership before the marriage (commonly known as pre-nuptial agreements). Before making such an agreement, it is advisable for the parties to get independent legal advice. Provisions that are ambiguous or contrary to public policy defeat the purpose of having the agreement in the first place. Therefore, the parties should ensure that the agreement is sound and they have received the input of a legal practitioner.

Points to Note

- Spousal consent is a requirement in any disposal or alteration of interest in matrimonial property.
- Despite property being registered in the name of one spouse, the other spouse has a beneficial interest in it if acquired during the subsistence of a marriage.