

IN THE UPPER CUSTOMARY COURT OF KADUNA STATE

IN THE TELEVISION JUDICIAL DIVISION

HOLDEN AT TELEVISION

SUIT NO. UCCT/CV/69/2026

BEFORE:

**HIS WORSHIP EMMANUEL J. SAMAILA, ESQ.
JUDGE**

**MR JAMES K. KAJANG
MEMBER**

27TH AUGUST, 2026

BETWEEN

HM

PETITIONER

AND

MH

RESPONDENT

JUDGMENT

The Petitioner seeks the dissolution of his marriage, which was contracted under Bajju custom with the Respondent. The Respondent denied his claim and expressed her resolve to stay in their matrimonial home with her children.

The Petitioner called two witnesses, PW1 and PW2, and closed his case. The Respondent equally called two witnesses, RW1 and RW2, and closed her case.

The parties' matrimonial home was visited, where the parties' children were noticed to be almost unaware of this action. None of them was called as a witness by either party.

The parties are Kagoma (Gwong) and Bajju (Jju) by tribe respectively.

By virtue of Section 24 of the Customary Courts Law 2001, Customary Courts in Kaduna State are to apply customary laws, the principles of natural justice, equity, and good conscience in the determination of civil disputes.

The Courts are also empowered to use common sense and simplicity, devoid of technicalities, to do substantial justice. See Section 59 of the Customary Courts Law 2001 and *Agbasi v. Obi* (1998) 2 NWLR (Pt. 536) 1 at 14, paras. A-B.

It is also permissible for Customary Courts to consider the totality of the evidence of the parties, irrespective of their claims, to deduce and justly resolve the actual issues in dispute. See *Danjuma Ibrahim v. Kasuwa Abashe & Ors* (2014) KCCLR-24 (CCA).

It is noteworthy that the appearance of legal practitioners in the Customary Courts does not affect the principles of adjudication in the Court. See *Ogunnaike v. Ojayemi* (1987) 1 NWLR (Pt. 53) 760.

PW1 told the Court that she was aware that the Respondent had moved out of their matrimonial home.

PW2 corroborated the evidence and added that the Respondent moved out in 2010 but continued to visit their children and attend family functions. He further stated that she refused to leave after she was treated for an ailment in the house this year, claiming that she took part in building their matrimonial home and desired to stay there with her children.

RW1 supported the testimony of PW1 and PW2 that the parties had been separated. She further averred that the Respondent refused to leave the matrimonial home because she contributed to building it.

The evidence of RW2 materially corroborates that of RW1 regarding her contribution to building the matrimonial home. She added that they have three children, aged 26, 22, and 20 years.

The witness also told the Court that they acquired their matrimonial home about 20 years ago as a couple and that it is her wish, and that of her children, that she lives in it with them.

Considering the evidence of the parties, we distilled the following issues for determination:

1. Does a valid marriage in accordance with Bajju custom exist between the parties?
2. Can the Respondent live in their matrimonial home with her children as she desires?

ISSUE 1

The parties and their witnesses testified that the parties are married but have been separated for over 10 years. It is also indisputable that they have three children.

In view of the corroborative evidence of the Petitioner and his witness, which is supported by the testimonies of the Respondent and her witnesses, we have no basis to doubt the credibility of their evidence.

We answer Issue 1 in the affirmative. We find that a valid marriage in accordance with Bajju custom exists between the parties, and we so hold.

Therefore, in view of the fact that this marriage has broken down, as evidenced by the parties' earlier separation, irreconcilable differences, and this action, the marriage is hereby dissolved with effect from today, 27th August 2026.

The parties are admonished to relate peaceably with each other in the interest and benefit of their children, who ought to be protected from any adverse effect of their parents' decision.

ISSUE 2

While the Petitioner asserts sole ownership of their matrimonial home, the Respondent claims joint ownership of the property.

Being Kagoma by tribe, it can be deduced that the Petitioner hinges his claim for the eviction of the Respondent from their matrimonial home on Kagoma custom.

Despite her non-presentation of direct evidence on the nature of her contribution to the acquisition of their matrimonial home, certain relevant facts can be deduced from the evidence of the parties. These constitute material facts upon which the Court will act justly, with fairness and equity, in the settlement of the parties' rights in their matrimonial home.

Firstly, the parties have three children.

A basic knowledge of the multidimensional trauma and near-death experiences some women go through to carry a pregnancy to full term, give birth, and nurture a child from infancy to adulthood, as the Respondent did for their three children, shows that these essential but non-monetary acts must be taken into consideration when contemplating the dynamics of a woman's contribution to the prosperity of the family, one aspect of which is the acquisition of their matrimonial home.

Ordinarily, each pregnancy comes with its peculiar challenges, and each birth, whether through natural or other means, puts the life of a mother at risk.

The fluctuating and conflicting hormones during the nine months of pregnancy and the sometimes ensuing post-birth PTSD cannot be disregarded when considering the contribution of a wife to the growth of the family.

While this may not be a direct contribution to the acquisition and building of a matrimonial home, the joy and satisfaction that the presence of children brings to the home enable the husband to focus and excel in his business and make direct financial contributions to the acquisition of matrimonial properties.

Furthermore, the rights of the parties' children to live in their family house with their parents cannot be overemphasized, as their relationship with their parents is unaffected by their parents' legal status.

In fact, the Respondent's evidence that their children desire that she lives with them in the property in issue was not challenged by the Petitioner.

It is not a strange thing to find couples who are, for all intents and purposes technically divorced, living together in the same house for the sake of their

children and to avoid the judgmental perception of their family by society and/or their religious organization, especially if they are Christians.

Secondly, we consider the time the property was acquired.

The evidence of the Respondent (RW2) that the acquisition of the land and the building of their matrimonial home occurred about 20 years ago, that is, about seven years after their marriage, was uncontroverted.

Building a matrimonial home after seven years of marriage is quite an achievement for a family.

We reason that if there was no peace and harmony in the home, the couple could not have been able to prosper enough to acquire the property.

Even if the Respondent is considered a mere housewife, homemaker, and child-bearer within the seven years prior to the acquisition of the property, those functions are vital to the growth and stability of the home, enabling the Petitioner to focus and succeed in his business and make direct financial contributions towards the acquisition of the property.

It would be unfair and inequitable to require the Respondent to make direct financial contributions as the Petitioner must have done.

In her mind, the role she played as a wife and the vacuum she filled as a mother were important and material enough to make her a stakeholder in the properties acquired during the subsistence of their marriage, particularly their matrimonial home.

Even if she had made a direct financial contribution, keeping receipts would not be something she would contemplate, typical of women who are focused on building a long-term relationship and are not envisaging a dispute someday, not to talk of a divorce, judicial or non-judicial, for which receipts may be required to prove their contribution to the acquisition of matrimonial properties, more often than not signified by a matrimonial home.

Keeping records of her direct contribution is also less likely to cross the mind of a mother after she has children, the customary heirs of family properties alongside a surviving spouse.

In the context of family life, the parties' different kinds of contributions are both valuable and incomparable, as both are necessary for the building of the home,

which comprises the family and the properties acquired, especially their matrimonial home.

It would be illogical, unfair, and inequitable to elevate one contribution over the other, as both are complementary.

Finally, we consider the provision of moral support to the Petitioner by the Respondent.

The supportive role of a woman in ensuring that her husband returns home to a relaxed environment, where his multi-dimensional needs are catered for, cannot be overlooked in measuring the quantum of her contribution to the building of their home and the acquisition of their matrimonial home and other family assets.

The parties have been married for over a quarter of a century, 26 years. They each expended the youthful parts of their lives in building their relationship and their family.

It will be fair and equitable to deduce that the investment a woman makes through her devotion to building the home and seeking the prosperity of the family invariably makes her a stakeholder and beneficiary of any properties acquired, even if her name never appears on any title documents.

This conclusion aligns with the constitutional right of all persons to own property as enshrined in Section 43 of the Constitution of the Federal Republic of Nigeria 1999.

It can be deduced that, excluding the 10 years of their separation, during which the Respondent was even visiting the house and attending family functions, there is no evidence that the Respondent was not a good wife during their active married years.

There is also no evidence that she did not perform her duties as a partner.

Meeting the Petitioner's conjugal needs, birthing and nurturing children, and home-keeping generally count as contributions towards building a matrimonial home because contribution to the acquisition and building of a matrimonial home is not limited to financial contributions by a spouse.

See the persuasive authority of the Supreme Court of Kenya in *JOO v. MBO & Federation of Women Lawyers (FIDA Kenya) & Anor* [2023] KESC 4 (KLR) and *Aguolu v. Aguolu* (2025) LPELR-80269 (CA).

In *JOO's* case, the Court based its decision on the settlement of properties not just on statutory laws but also on the principles of equity.

The Court held that:

“To our minds, equity is an important principle when it comes to matrimonial property since what is fair as it relates to equity is not a question of the quantitative contribution by each party but rather the contribution by any party in any form, whether direct or indirect. Any substantial contribution by a party to a marriage that led to acquisition of matrimonial property, even though such contribution is indirect, but nevertheless has in one way or another, enabled the acquisition of such property amounts to significant contribution.”

Such direct or indirect acts as was discussed by Lord Justice Fox in *Burns v Burns* [1984] 1 All ER 244 may include:

- i. Paying part of the purchase price of the matrimonial property.
- ii. Contributing regularly to the monthly payments in the acquisition of such property.
- iii. Making a substantial financial contribution to the family expenses so as to enable the mortgage instalments to be paid.
- iv. Contributing to the running of and welfare of the home and easing the burden of the spouse paying for the property.
- v. Caring for children and the family at large as the other spouse works to earn money to pay for the property.

In *Aguolu's* case, the Court echoed the conclusion reached in *JOO's* case.

The Court held that a mere marriage, without more, does not entitle a spouse to an equal share of matrimonial property.

On this principle, the Court referenced Lord Denning's decision in *Fribance v. Fribance* (1957) 1 All ER 357 at 360 CA, where it was held that:

“In the present case, it so happened that the wife went out to work and used her earnings to help run the household and buy the children's clothes whilst the husband saved. It might very well have been the other way around. The title of the family asset does not depend on the mere chance of which way around it was. It does not depend on how they happen to allocate their expenditure. The whole of the resources were expended on their joined benefit... and the product should belong to them jointly. It belongs to them in equal shares.”

In the instant case, the deducible facts show that the Petitioner and the Respondent each expended material and non-financial resources in the acquisition of their matrimonial home.

Considering the foregoing, we resolve Issue 2 in the affirmative.

We find that the Respondent can live in the matrimonial home with her children, and we so hold.

FINAL ORDERS

Therefore, judgment is hereby entered as follows:

1. The Kagoma custom on matrimonial property, apparently relied upon by the Petitioner to claim exclusive ownership of the matrimonial home, seek the eviction of the Respondent from the property, and deny her right to share in it, is hereby declared repugnant, unconstitutional, and unenforceable.
2. The parties are hereby declared joint owners of their matrimonial home and have equal rights to live in it with their children, who are their heirs, so long as none of them disturbs the peace in the house.
3. The parties shall each bear their respective costs.

Any party that is dissatisfied with this decision may appeal to the Customary Court of Appeal, Kaduna within 30 days from today, 27th August, 2026.

SIGNED 2708 2026