



## **Appraisal of the Concept of Matrimonial Property under Nigerian Law**

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## APPRAISAL OF THE CONCEPT OF MATRIMONIAL PROPERTY UNDER NIGERIAN LAW

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### Abstract

*Family and matrimonial contracts are often oral, unwritten and made without fear of breach. Consequently, spouses contribute both financially and non-financial towards the success of the marriage and acquisition of their matrimonial home. Often, the shared intentions of the spouses is usually to create a comfortable home for the family and each make indirect, invisible and unquantifiable sacrifices towards the success of the marriage. The State High Court is conferred with unlimited discretion in respect of matrimonial property and in exercising this discretion it often insists that a party must show evidence of substantial and direct financial contributions to the acquisition of matrimonial property before joint ownership of matrimonial property is inferred. Basically the library based research, is adopted in this article both the primary and secondary sources of law are cited. The findings of this article are: (1) Where there is a document of title in favour of one party to the marriage, that property is lost as a matrimonial property. (2) Where a party is insisting that the property in issue is jointly owned, that party is responsible for producing evidence to the effect that both parties contributed adequately to the acquisition of the said property, whether financially or otherwise. (3) Oral evidence, even, about the parties' private arrangements cannot be allowed to contradict the content of document of title. This article recommends for a statutory definition of matrimonial property that will ingrain the socio-cultural norms and values regarding marital relations as a communal and partnership arrangement.*

**Keywords:** Property, Matrimonial property, Marital asset, Statutory marriage, Customary marriage readjustment

### 1. Introduction

The word 'property' refers collectively to the rights in valued resources such as land, chattels, or an intangible. It is a 'bundle of rights' and includes the right to possess and use, the right to exclude and the right to transfer.<sup>1</sup> Therefore property in law connotes both incorporeal (non- physical such as leases, mortgagees, share, insurance etcetera) and corporeal (physical property). On the other hand matrimonial property or marital property refers to property that is acquired during marriage and that is subject to distribution or division at the time of marital dissolution.<sup>2</sup> The Court in *Anieto v Anieto*<sup>3</sup> explained marital

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<sup>1</sup> BA Garner, *Black's Law Dictionary* (10<sup>th</sup> edn 2014) 1410.

<sup>2</sup> Ibid 1410.

<sup>3</sup> (2019) LPELR-47223 (CA).

property, when it stated, that, ‘it is however essential that the property should have been purchased in the course of the marriage or where the property was purchased before the marriage was completed after and in the course of the marriage, as in the case of a property purchased on mortgage’. Therefore, marital property can be seen as a property that its full ownership was acquired in the course of marriage by any of the spouses.

Marital property is one of the matters over which angry divorcing spouses disagree. This is made prominent by the passage of various laws and judicial decisions permitting women to acquire property<sup>4</sup>. The law generally permits the parties to manage their relationship to their property during marriage, but upon breakdown, it always sought for a way to strike a balance between the parties and marital property in issue. The Matrimonial Causes Act 1970 (MCA)<sup>5</sup> and Married Woman Property Act 1882 (MWPA)<sup>6</sup>, give court discretion to achieve equity and fairness in marital property action. The courts are enjoined to be equitable in benefiting all the parties involved and are bestowed with a wide discretion in doing so. This equity jurisdiction covers all properties of the parties whether jointly or separately acquired. While this equity jurisdiction of the court is well defined, the problem that they have faced over time is how to exercise this jurisdiction. Generally the courts approach is to exclude from their equity jurisdiction property over which formal title is shown.<sup>7</sup>

This approach makes the equity jurisdiction of the court in matrimonial property problematic. Perhaps the problem stems from the absence of a specific marriage centred definition of matrimonial property in the statute. The consequence is that the courts restrict their jurisdiction by focusing on finding where the title lies (usually in the man) and exclude property which title is located from their equity jurisdiction. This is often disadvantageous to the women who are usually non-title land user. This position ignores the socio-cultural underpinning, orientation and environment of marriage patriarchy in Nigeria and generally disables women in relation to property rights.<sup>8</sup> The consequence is that equity, which is the objective of the jurisdiction, fails, and women are further deprived of property rights. This article recommends for a statutory definition of matrimonial property over which court can exercise jurisdiction. Such definition should remove discretion from the court regarding specification of property that it can readjust, recognize and include the legal, social and cultural significance of marriage as its core basis and promotes

<sup>4</sup> *Onyibor Anekwe & Anor v Mrs Maria Nweke* (2014) LPELR-22697(SC); *Nzekwu v Nzekwu* (1989) 3 SCNJ 167.

<sup>5</sup> Cap M7 Laws of the Federation (LFN) 2004.

<sup>6</sup> The Married Women Property Act 1882, applicable to Nigeria as a Statute of General Application.

<sup>7</sup> Micheal Attah, ‘Divorcing Marriage from Marital Assets: Why Equity Fail in Property Readjustment Actions in Nigeria’ (2018) 62 (3) *Journal of African Law* 427– 446.

<sup>8</sup> Ibid.

communal property ideal during the subsistence of the marriage. This would prevent the court from using their discretion to restrict their equity jurisdiction.

## **2. The Concept of Matrimonial Property under the Customary Law**

This article is concerned with statutory marriage. However, for purposes of clarity, it is necessary to discuss Customary Law position on marital property. Customary and Islamic Marriages<sup>9</sup> share property after divorce according to customs and Islamic teachings that are not contrary to the Constitution of Nigeria. Such customs must not be repugnant to natural justice, equity and good conscience. Generally, most customs vest properties after divorce on the husbands and not the wives, even where the wives contributed to the property. This practice is against the hallowed principles of fairness and equality as enshrined by the constitution.

Under the customary law, both the man and the woman can acquire property either before or during the marriage. The woman is not barred from holding or acquiring property. Also when the man acquires a property, he has sole interest or right over the property. When a marriage under the customary law is been dissolved, the woman has no right to claim for settlement of property even if she contributes to the acquisition of such property. She cannot through a court order compel her husband to share property with her.<sup>10</sup> However, the above position of the customary law position on marital property cannot stand the test of time, considering the recent developments in law. The Supreme Court in analysing “whether any culture that disinherits a daughter from her father’s estate or wife from her husband’s property should be punitively and decisively dealt with held as follows:

I hasten to add at this point that the custom and practices of Awka people which the appellants have relied for their counter claim is hereby out rightly condemned in very strong terms. In other words, a custom of this nature in the 21<sup>st</sup> century society setting will only tend to depict the absence of the realities of human civilization. It is punitive, uncivilized and only intended to protect the selfish perpetration of male dominance which is aimed at suppressing the right of the womenfolk in the given society. One would expect that the days of such obvious discrimination are over. Any culture that disinherits a daughter from her father’s estate or wife from her husband’s property by reason of God institute gender differential should be punitively and decisively dealt with. The

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<sup>9</sup> Islamic Marriages refers to marriages conducted under the Islamic law. Islamic law is not the same as customary law as it does not belong to any particular tribe. It is a complete system of universal law, more certain, more permanent and more universal than the English common law” Per Wali JSC in *Alkamawa v Bello & Anor* (1998) LPELR-424 (SC). For this reason, this article will limit its discussion to customary marriages.

<sup>10</sup> Resolution Law Firm, ‘Sharing Property After divorce in Nigeria’ (2020) <<https://www.resolutionlawng.com/sharing-of-property-after-divorce-in-nigeria>> accessed 17Nov 2021.

punishment should serve as a deterrent measure and ought to be meted out against the perpetrators of the culture and custom. For a widow of a man to be thrown out of her matrimonial home, where she had no male child, is indeed very barbaric, worrying and flesh skinning. It is indeed much more disturbing especially where the counsel representing such perpetrating clients, though learned, appears comfortable in identifying, endorsing and also approving of such a demeaning custom. In similar circumstances as the case under consideration, this court in *Nzekwu v Nzekwu* (1989) 3 SCNJ page 167 held amongst others and ruled “that the plaintiff had the right of possession of her late husband’s property and no member of her husband’s family has the right to dispose of it or otherwise whilst one is still alive”.<sup>11</sup>

### 3. Statutory Provisions on Matrimonial Property

The relevant laws on matrimonial property are MCA and the MWPA. In divorce situation section 72 (1) MCA provides that the court may by order require the parties to the marriage, or either of them to make, for the benefit of all or any of the children of the marriage such a settlement of property to which the parties are, or either of them entitled (whether in possession or reversion) as the court considers just and equitable in the circumstances of the case. S. 72(2) MCA provides that the court may make such orders with respect to the application for the benefit of all or any of the parties to, and the children of, the marriage of the whole or part of property dealt with by ante-nuptial or post –nuptial settlements on the parties to the marriage or either of them. Section 17 MWPA provides that in any question between husband and wife as to title or possession of property either party may apply to a judge and the judge may make such order with respect to the property in dispute as he thinks fit or may direct any inquiry touching on the matters in question to be made in such manner as he shall think fit. The MWPA applies to couples married under the Act that are not divorced or divorcing.

From the above provisions the range of the courts discretion under section 72 of MCA appears unlimited. Section 72(1) MCA grants discretion to courts to settle property of divorced couples in a manner that is ‘just and equitable in the circumstances of the cases.’ It is only limited by the requirement for the court to be just and equitable in exercising its jurisdiction in line with needs of spouses and their children. It could apply in situation where the marriage is void<sup>12</sup>, this is in line with section 69 MCA which provides that void marriage can ignite the courts equitable jurisdiction. The section 72 (1) (2) of the MCA provisions covers both property jointly and separately owned by the parties and the ones acquired during and before the marriage. The above section applies regardless of where title lies and ownership of property is not in issue. It does not exclude any type or category of property from the court’s jurisdiction, both corporeal

<sup>11</sup> Per Ogunbiyi JSC in *Onyibor Anekwe & Anor v Mrs Maria Nweke* (2014) LPELR-22697(SC) (36-37, paras A-B)

<sup>12</sup> *Oghoyone v Oghoyone* (2010) LPELR-4689(CA).

and incorporeal property acquired during marriage is covered as matrimonial property.

Therefore, the court has unlimited powers in determining the fate of all properties of spouses where there is divorce. It does not focus on ownership of property, since undoubtedly ownership rests on the marriage union and their participants. Rather it focuses on the management (sharing and settlement) of the property the benefits of the spouses and their children, to ensure post marriage wealth redistribution and adjustment.<sup>13</sup>

The effect of the above provisions is that all properties belonging to the parties are to be regarded as matrimonial property and court may decide to readjust. The purpose of readjustment is to be fair to both parties. Also, the courts discretion will be fettered where it focuses its equity jurisdiction on making findings as to who between the parties has title to a particular property so as to declare exclusive ownership on that party. The exercise of such jurisdiction would run counter to the basis of its equity jurisdiction.<sup>14</sup> This is because it has the consequence of reducing the range of property that the court can readjust. More so, it can prevent the other party and children of the marriage (if there is any) from benefiting from the matrimonial property.

#### **4. The Approach of the Nigerian Courts in Exercising Jurisdiction over Matrimonial Property**

By agreement, couple may settle their property through a pre-marriage agreement (pre-nuptial contract) or a post-marriage agreement (post-nuptial contract). Above all, all agreements towards the sharing of marital property must be presented to a State High Court for the judge to verify it and ensure that it is 'just and equitable in the circumstances of the cases' in line with the provisions of the MCA. Only the State High Courts and High Court of the Federal Capital Territory, Abuja, can entertain and resolves cases of divorce and settlement of marital property in statutory marriages.

The courts in Nigeria usually proceed to locate title using evidence-based tools, worsened by the adversarial technicalities of pleadings and proof. Whoever has legal title for which there is documentary evidence retains separate ownership, and such property is excluded from the courts equity jurisdiction as a matrimonial property. Generally, the parties may have only one piece of land or house that has served as their matrimonial home. And the parties might have pooled resources to acquire the land or erect the house. To the woman most times, proving ownership of such property is often a herculean task, considering the cultural principles underpinning marital relations in Nigeria. The courts

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<sup>13</sup> Onyedikachi Umah, 'Who Takes Over the Property after Divorce?' (2021) <<https://learnnigerianlaws.com/who-takes-over-the-property-after-divorce/>> accessed last on 17 Nov 2021.

<sup>14</sup> Attah (n 7).

adopt the strict property rights approach in ordering for redistribution, regardless of economic analysis of the worth of a housewife, this often leaves the financially weaker spouse (usually the wife) at an economically disadvantaged position.<sup>15</sup> Therefore, the courts approach often defeats the equity objective of the jurisdiction.

Accordingly, in *Oghoyone v Oghoyone*<sup>16</sup> the Court of Appeal held that property separately owned by the parties during the marriage are not matrimonial property, while the ones jointly owned are retained as matrimonial property. The ones jointly owned can be sold by order of court and its proceed shared between the parties in accordance with section 17 of the Married Women's Property Act which confers on the judge power to make orders in respect of property in dispute as he thinks fit such an order must be fair, just and equitable. Consequently, Owoade JCA in *Essien v Essien*<sup>17</sup> held that a direct financial contribution to the purchase price of the matrimonial home or to the repayment of the mortgage instalments in respect thereof, was sacrosanct before joint interest could be inferred.

Also, in *Adaku Amadi v Edward Nwosu*<sup>18</sup> the appellant husband sold the house which served as their matrimonial home and moved to a different city. The respondent refused to vacate the house. The Respondent purchaser sued for declaration of title, injunction and damages for trespass. The Appellant could not produce evidence to support her claim that she has interest in the property. Affirming the ownership of the husband as the owner of the matrimonial home Kutigi JSC (as he then was) said that '...when she came to testify in court, she ought to have explained the quality and quantity of her contribution, she also ought to have given particulars of the contribution which would have enabled the court to decide whether or not she owned the property with PWI (her husband)'. And on this basis, the court held that the house in question is not jointly owned. Therefore, where a spouse claims joint ownership of property, he must be able to quantify his contribution. He must give detailed particulars and support them where necessary with receipts of what he bought towards the building of the property.

Similarly, in affirming the above position, Tukur JCA (as he then was) in *Odedola v Odelola & Ors*<sup>19</sup> said:

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<sup>15</sup> CJ Efe and OE Eberechi, 'Property Rights of Nigerian Women at Divorce: A Case for a Redistribution Order' (2020) <<https://journals.assaf.org.za/index.php/per/article/view/5306>> accessed 17 Nov 2021.

<sup>16</sup> *Oghoyone v Oghoyone* (2010) LPELR-4689 (CA) per Rhodes –Vivour JCA, para B.

<sup>17</sup> (2008)LPELR-4049(CA); *Gissing v Gissing* (1970) 2 ALL ER 780; *Rimmer v Rimmer* (1952) 2 ALL ER 803 at 869.

<sup>18</sup> (1992) LPELR-442 (SC); (1992) 6 SCNJ 59.

<sup>19</sup> (2016) LPELR -42222(CA) 12 paras A-E.

...in her effort to establish a joint ownership of the property the Appellant tendered Exhibits B and L. I have examined the exhibits relied on by the Appellant which are invoices bearing her name showing evidence of some repairs effected on the property. But as rightly pointed out by the learned trial judge these exhibits by themselves cannot translate into making the Appellant a joint owner of the property which is in the sole name of the 1<sup>st</sup> Respondent. For the Appellant to succeed, she must adduce evidence to show what direct financial contribution she made to warrant co-ownership of the property. The law is trite that a direct financial contribution to the purchase price of the matrimonial home or to the repayment of the mortgage instalments in respect of the property is necessary before joint interest could be inferred.

In *Onabolu v Onabolu*<sup>20</sup> the wife/petitioner claimed among other, against her husband that their joint matrimonial property be shared equally. The court having examined all the pieces of evidence given by the wife/petitioner and husband/respondent on the issue of joint ownership of the property found that evidence of the husband positively established that he bought the land over which the property was built. The Court of Appeal held to the effect that: ‘it is settled law that a person who claim joint owner of a property must be able to quantify his contribution. He must give detailed particulars and support them where necessary with receipts of what he bought towards the building of the property.’

Therefore, it follows that substantial and ascertainable contribution in the acquisition of matrimonial property is the qualification for distribution of marital property upon divorce in Nigeria. This position is anti-marital and does not take into cognizance the reality that the cultural marital norms and values foster common ownership of property and a strong female deference to men.<sup>21</sup> In Nigeria, generally a woman does not receive land from her natal family. Even when a woman receives some grant, her right is usually usufruct.<sup>22</sup> Where it is titular, distance usually prevents her from claiming it and exercising control over it as her responsibilities to husband's family prevails. This applies regardless of the modern developments in law granting proprietary rights to women.

Also it is socio cultural awkward for a married woman to acquire separate landed property. Even where she provides the entire income, with few exceptions, she is content to have land and other costly item purchased in her husband's name. And for some cultural and religious reasons, the wife will not usually have monopoly of documentary evidence to show the internal family arrangement and negotiations regarding how property was purchased or income

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<sup>20</sup> (2005) 2 SMC 135.

<sup>21</sup> Attah (n 7).

<sup>22</sup> Per Nnamani JSC in *Nzekwu v Nzekwu* (1989) LPELR-2139(SC); *Aniekwe v Nweke* (2014) 9NWLR (Pt 1412) 393 – customary law allows women (widow) possessory in the family estate for life.



was generated or spent. And the law is that oral evidence cannot be allowed to be given to add, vary contract that parties have reduced into writing.<sup>23</sup> Consequently her use of land is generally non-titular, informal and secondary as a married woman.

This approach is simply, garbage in, garbage out system. In this a husband or wife receives only what he/she proves to have directly contributed financially or non-financially towards the property of the marriage.<sup>24</sup> And whatever contribution that cannot be proven is lost and marital property lost too. It is title finding oppressive and highly conservative. It does not consider the indirect, invisible and often unquantifiable contributions of spouses towards marital properties.<sup>25</sup>

It is on its own, a contradiction of the principle of family contract, where contracts are often oral, unwritten, made in beds and kiss, without fear of breach of contract. It is discriminatory, male – biased and divisive. It treats marital property and contributions to it in isolation to all other marriage sacrifices and contributions and also expects every family agreement to be documented. It is an unfair approach designed to oppress women and wives, and has a strong origin in the customary laws in Nigeria, where wives are mere helpers and properties of their husbands. This approach is a sympathizer to repugnant customary systems, where ‘wives are mere properties and as properties, cannot own properties’. It puts the onus on wives to show documentary proofs of their contributions to the ownership of marital property. Even where there are obvious proof that wives earned more and even took care of other family affairs and cost.<sup>26</sup> However, of recent, the court appears to be departing from the above approach of title finding in marital property to considering the direct and indirect, visible and invisible, quantifiable and unquantifiable contributions of spouses towards acquiring their marital properties. Therefore, marital properties are considered to be jointly owned by both spouses, since both contributed in diverse ways towards the marriage itself and not towards specific items and properties. This recent approach by the courts is liberal, open minded and unbiased towards any spouse or sex, by treating all spouses equally and fairly. The court relies on the principle of equity to determine the rights of spouses to a property and not on proof of financial /non-financial contributions to the property. This is a property redistribution model. Under this, every ex-spouse is compensated from the wealth of their union. The sense here is that while a

<sup>23</sup> Per Rhodes-Vivour, *JCA Oghoyone v oghoyone* (2010) LPELR-4689, CA (pp 19-20, paras. F-A).

<sup>24</sup> *Anieto v Anieto* (2019) LPELR-47223 (CA).

<sup>25</sup> Other cases where this approach was enforced includes: *Akinboni v Akinboni* (2002) 5 NWLR (Pt 761) 564; *Egunjobi v Egunjobi* (1976) 2FNLR 78; *Nwanya v Nwanya* (1987) 3 NWLR (Pt 62) 697; *Sodiye v Sodiye* (1990) 5WRN 98.

<sup>26</sup> *Odelola v Odelola* (2016) LPELR CA (p 13 paras A-E); *Essien v Essien* (n 17); *Onwuchekwa v Onwuchekwa* (1995) 5 NWLR (Pt 194) 739.

spouse (mostly a wife) makes food, babysits and focuses on house chores, she indirectly contributes to the purchase of any marital property by her spouse. With this approach, the cases of Jeff Bezos and Bill Gates (where their wives got chunks of the investment of their husbands, without having any direct contributions to such) would have also been same in Nigeria. This approach is equitable and reflective of Nigerian families.<sup>27</sup>

In the face of marital realities, wives often play non-financial roles towards property acquisitions and such must not be left out in the sharing of marital properties. In some cases, the wives earn salaries and own large investments, after all they are human beings. Where because of undeniable closeness to children, wives orally agree to focus their wealth on education and advancement of the children, while husbands focus theirs on marital properties, it is injustice for any court to deny that the wives are co-owners of the marital properties.<sup>28</sup>

In *Anieto v Anieto*<sup>29</sup> the Court of Appeal held inter alia ‘...it is correct that the contribution of a party does not necessarily have to be in nature of cash outlay for the purchase of the property. It can be by way of moral and/financial contribution to the business of a husband by a wife’. Accordingly it held that:

Though the respondent might not have contributed financially or in the nature of cash outlay towards the purchase of the land and subsequent development thereof, there is uncontroverted evidence that she actively contributed towards the success of the business of the appellant, which ultimately fetched the money with which the land was developed. In the circumstances, it will be unjust and inequitable for the court, being of law and equity, to allow that to happen. The learned trial judge was therefore right when he ordered that the property in question be sold and the proceeds of sale be equally shared between the appellant and the respondent.

Thus, if a fulltime wife manages the husband’s affairs while the husband goes ahead and excel in his career, in event of divorce, equity will not allow such a woman to go empty handed. In *Kafi v Kafi*<sup>30</sup> the husband contended that the wife was not a joint purchaser or developer of the property with him. The court in rejecting the argument held that there was evidence that the wife actively managed the husbands business, she actively participated in the supervision and construction of the husband’s property and the wife provided the necessary support for the husbands business. The pendulum of justice swung in favour of the wife. In *Muller v Muller*<sup>31</sup> a man claimed a joint ownership of a marital property. The court held that ‘as husband and wife there is nothing wrong in buying property in the name of one of the parties. Such still remains marital

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<sup>27</sup> Umah (n 13).

<sup>28</sup> Ibid.

<sup>29</sup> (2019) LPELR-47223 (CA).

<sup>30</sup> (1986) 3 NWLR (Pt27) 175.

<sup>31</sup> *Mullerv v Muller* (2005) LPELR-12687 (CA); (2006) 6 NWLR (Pt 977) 627.

property which belongs to the parties'. Again, in *Okere v Akaluka*<sup>32</sup> the court held that sometimes the indirect contributions of the wife to the marital property cannot be quantified in monetary terms which would entitle her to a share in the property. This accords with modern reality particularly, where the parties were husband and wife of Christian and statutory marriage.

Similarly in the English case of *Rimmer v Rimmer*,<sup>33</sup> both the husband and wife were wage earners. They bought a house in the name of the husband as the matrimonial home. The wife provided the deposit for the house. The rest of the purchase money was borrowed on the security of a mortgage from a building society in the name of the husband. The remainder was repaid by the wife out of her money at a time her husband was on war service. The wife provided all the furniture for the home out of her own resources. When subsequently, the husband left the wife and the house was sold, the proceeds were shared equally between them on a summons under section 17 of MWPA. Therefore, as Rhodes Vivour JCA succinctly puts it, with respect to matrimonial property 'it would be unconscionable for any party to claim exclusive ownership. Bearing in mind the changing social and economic realities, a judge is to ascertain the parties shared intentions, actual, inferred with respect to the property in the light of their conduct. In that light I am satisfied that when the going was good the parties made contributions to ensure that they had good living accommodation. When the going turns bad it is only right and equitable that each side recoups its contribution and call it a day.'<sup>34</sup>

The court in exercising its discretion in matrimonial property usually considers the circumstances of the case including the fortune of the parties and their responsibility. As such the court has a wide discretionary power to share properties as just and equitable and is enjoined to act judiciously. The children produced by the marriage are also member of the family. The court will consider sharing of property for the benefit of any child below 21 years of age except in special circumstances where it is justifiable to settle the property for his or her interest at the age of above 21 years.<sup>35</sup> Awotoye, JCA in *Mgbeahuruike v Mgbeahuruike*<sup>36</sup> held that the court in determining a question of settlement of matrimonial property under section 72 MCA is expected to consider (1) whether or not the property in question was acquired in the course of marriage? (2) What is the contribution of each party to the cost of the acquisition? (3) What is just fair, and equitable to do in the circumstance in settling the property?<sup>37</sup> In *Ibeabuchi v Ibeabuchi*<sup>38</sup> the question that arises is

<sup>32</sup> (2014) LPELR-24287 (CA) 1, 60-61.

<sup>33</sup> *Rimmer* (n 17).

<sup>34</sup> Per Rhodes Vivour JCA in *Oghoyone v Oghoyone* 20-22, paras B-B.

<sup>35</sup> MCA s 72(3).

<sup>36</sup> (2017)LPELR-42434(CA) (10-11, paras E-D).

<sup>37</sup> *Coker v Coker* (1964) LLR 188; *Amadi v Nwosu* (1992) 6 SCNJ 59; *Egunjobi v Egunjobi* (1974) 4 ECSLR.552; *Hayes v Hayes* (2000) 3 NWLR (Pt 648) 276 at 293.

whether the lower court exercised its discretion judiciously and judicially when it awarded the property of the Appellant at No 48, Sarki Yaki Road, Sabon Gari, Kano to the Respondent. The court held that the most firmly established guidelines that courts are enjoined to take into consideration in determining a question of settlement of property is whether or not the property in question or some other property was acquired by the parties or by one of the parties during the course of the marriage, and if so, what was the contribution of each party to the cost of acquisition. It is correct that the contribution of a party does not necessarily have to be in the nature of a cash outlay for the purchase or development of the property. It can be by way of moral and / or financial contribution to the business of a husband by a wife where the property is purchased from the profits of the business. It is however essential that the property should have been purchased in the course of the marriage or where the property was purchased before marriage, that the payment for the property was completed after and in the course of the marriage, as in the case of a property purchased on mortgage.

Furthermore, there is a presumption of advancement, where a husband buys a property in the name of his wife. In such circumstances, the law would presume an intention to gift the property to the wife or the husband as the case may be. This presumption is rebuttable by proving that no gift was intended. This extends to where a husband acquires title to land with his sole funds but inserts his wife's name as a co-owner. In such cases, the wife will acquire an equal interest in the property. The husband may prove that his wife contributed nothing financially but the court would presume that the wife's half share is advancement or a gift to her. However, there is no presumption of advancement where a woman buys property in the name of her husband. In *Julugbo & Anor v AINU & Anor*<sup>39</sup> the court held that when a wife buys a property and conveys it in the name of her husband, there is no presumption of advancement in favour of her husband, he holds it in trust for his wife. However, if the husband purchases a property in the wife's name, it is prima facie a gift to her.<sup>40</sup> The above law aims at stopping male chauvinism and treacherous attitude overtime and to save the loyal wives who bought properties in their husband's names only to be told that the documents speak for themselves. Thus, the husband merely holds the property in trust for the wife. Also, it is the primary duty of the husband to provide for the home and not the other way round.

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<sup>38</sup> Per Habeeb Adewale Olumuyiwa in *Ibeabuchi v Ibeabuchi* (2016) LPELR – 41268(CA) 30-31 paras A-D.

<sup>39</sup> (2016) LPELR-40352(CA) Per Justice Amina JCA 27-29 paras A-D; *Silver v Silver* (1958) 1 All E.R 523.

## 5. Findings

The position of the Nigerian courts with respect to matrimonial property is that where there is a document of title in favour of one party to the marriage, that property is excluded from being matrimonial property. A party that insists that a property in issue is jointly owned is responsible for producing evidence to the effect that both parties contributed adequately to acquire the property, whether financially or otherwise. Oral evidence, even, about the parties' private arrangements, cannot be allowed to contradict the content of document of title.

Accordingly, these judicial decisions have blurred the perceived ideal matrimonial property. When a party is striving to show joint ownership, it is simply asking that the property be shared using a formula. A core objective of that sharing jurisdiction is to benefit parties and their children. However, parties do not generally think in terms of separate or joint ownership in marriage. They see properties acquired during marriage from a communal perspective. Also properties and business success of parties to a marriage would usually be achieved by their joint efforts, which may not necessarily be quantifiable in monetary terms.

## 6. Recommendations and Conclusion

There is need for a statutory definition of matrimonial property by reference to legal, social and cultural marriage in Nigeria Context. The result will be that all property acquired by the parties or any of them during the subsistence of marriage should be regarded as matrimonial property. This position was adopted by the court in *Muller v Muller* and *Rimmer v Rimmer*.

There is need for a statutory definition of matrimonial property that will ingrain the socio-cultural norms and values regarding marital relations as a communal and partnership arrangement. This could maintain the shared intentions of the parties during the subsistence of the aborted marriage and would prevent the court from using their discretion to restrict their equity jurisdiction to determining titular ownership. The effect is that all properties belonging to the parties are to be regarded as matrimonial property and are shared on just and equitable basis for the benefits of the children of the marriage and the parties.