



**Matrimonial Property Rights: An Analytical  
and Comparative Study between Ugandan Civil  
Law and Islamic Law**

**حقوق الممتلكات الزوجية: دراسة تحليلية مقارنة بين  
القانون المدني الأوغندي والشريعة الإسلامية**

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**Abstract**

This research explores the trends in conceptualizing the matrimonial property in both statutory and Islamic laws in Uganda. Judges in both civil and Shariah courts have deliberated extensively on this concept, considering various socio-economic factors when determining what constitutes matrimonial property and the criteria for its distribution upon the dissolution of marriage. A qualitative study approach was employed to review both substantive and case laws, aiming to reveal the judges' considerations regarding what constitutes matrimonial property and the basis for determining its distribution upon the dissolution of marriage. Data were collected through observation, in-depth study, and analysis of written materials reflecting the theoretical concepts used in this study. The study concludes that the concept of matrimonial property has developed gradually. Although secular and Islamic laws have taken different approaches to recognize it, both regimes acknowledge the woman's contribution to matrimonial property. Consequently, they emphasize equity rather than equality in determining the shares upon the dissolution of marriage.

**Keywords:** Matrimonial property, Court of Appeal, Shariah Court, Ugandan law, Islamic law.

**ملخص البحث**

يستكشف هذا البحث الاتجاهات في تصور الممتلكات الزوجية في كل من القوانين الدستورية والإسلامية في أوغندا. وقد تداول القضاة هذا المفهوم في كل من المحاكم المدنية والشريعة على نطاق واسع، مع مراعاة العوامل الاجتماعية والاقتصادية المختلفة عند تحديد ما يشكل الممتلكات الزوجية ومعايير توزيعها عند فسخ الزواج. وتم استخدام منهج الدراسة النوعية لمراجعة كل من القوانين الموضوعية والسوابق القضائية، بهدف الكشف عن اعتبارات القضاة فيما يتعلق بما يشكل الممتلكات الزوجية وأساس تحديد توزيعها عند فسخ الزواج. تم جمع البيانات من خلال الملاحظة والدراسة المتعمقة وتحليل المواد المكتوبة التي تعكس المفاهيم النظرية المستخدمة في هذه الدراسة. وخلصت الدراسة إلى أن مفهوم الممتلكات الزوجية قد تطور تدريجياً. وعلى الرغم من أن القوانين العلمانية والإسلامية اتخذت أساليب مختلفة للاعتراف بها، فإن كلا النظامين يعترفان بمساهمة المرأة في الممتلكات الزوجية. وبالتالي، فإنها يؤكدان على الإنصاف بدلاً من المساواة في تحديد الأنصبة عند فسخ الزواج.

**الكلمات المفتاحية:** الممتلكات الزوجية، محكمة الاستئناف، محكمة الشريعة، القانون الأوغندي، الشريعة الإسلامية.

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## Contents

1. Introduction	106
2. The Concept of Matrimonial Property in the Ugandan Laws	107
3. The concept of Matrimonial Property in Islamic Law	109
4. Comparison between Ugandan Laws and Islamic Laws	111
5. Conclusions	112
6. References	112

## 1. Introduction

Matrimonial property refers to the wealth acquired during the marriage period, which both spouses directly or indirectly participated in acquiring and developing. (Sahid, 2016) In the event of a divorce or dissolution of the marriage, this property is subject to division between the spouses. The concept of matrimonial property is central to family law as it addresses the financial implications of marriage and its termination, directly affecting the economic well-being of both spouses. The issue of matrimonial property often becomes prominent after the separation of spouses. Divorce is among the three most prevalent legal challenges in Uganda. According to statistics, 48% of individuals facing family problems dealt with divorce or separation, and 7% of Ugandans have experienced divorce or separation in the past four years, with 48% reporting a loss of income as a consequence of divorce (HiiL, 2020)

The determination of matrimonial property is a key issue in divorce petitions in Uganda, often leading to conflicts as both spouses strive to provide strong evidence to justify their contributions to the property accumulated during the marriage (Awino, 2013). As a state party to several international legal instruments, Uganda has signed and ratified numerous conventions and protocols that address matrimonial property. However, Ugandan courts have taken varying approaches in determining what constitutes matrimonial property and how it should be distributed upon the dissolution of marriage. While upholding principles of equality and non-discrimination, judges have considered both direct and indirect, monetary and non-monetary contributions, often awarding equal shares to both partners. In some

instances, a larger share has been awarded to the divorced wife, leading to perceptions that these rulings are more about advocating for women's rights than addressing the issue of equitably (Birungi, 2017). This trend continued until a recent judgment by the Court of Appeal, which adopted a more holistic approach, recognizing the contributions of both partners and their impact on the distribution of matrimonial property at the end of the marriage.

In contrast, Islamic law has traditionally recognized the rights of both the husband and wife to own property before, during, and after the dissolution of marriage. The concept of matrimonial property is not explicitly detailed in classical and contemporary Islamic jurisprudence, largely because the Islamic social system obliges the husband to provide for and maintain his wife. As a result, property acquisition and ownership have typically been in the hands of the husband, with no financial entitlement to the woman upon the dissolution of marriage. Additionally, the Islamic perspective of ownership (*milkiyyah*) is based on the proof of acquisition rather than marital status. However, given the changes in socio-economic dynamics and a shift in inter-marital roles that have seen more women actively involved in earning, contemporary Islamic family law legislation has codified the matrimonial regime, making it enforceable in Shariah courts (Eletrebi, M.F. M. & Suleiman, H., 2021).

A recent case, *Bashaar Vs. Aminata*, heard in the Shariah Court in Uganda under the office of the Supreme Mufti – Kibuli, marked a significant development in the determination of matrimonial property. The court, applying Islamic law, considered the wife's direct financial contribution to the acquisition of property during the marriage and ruled in her favor, awarding her the largest share after it was established that the husband, who claimed a share after the divorce, had only been a witness to the transactions initiated by the wife.

These two cases, though arising from different legal systems (secular and Islamic), demonstrate the courts' consideration of direct financial contributions to matrimonial property as the basis for sharing after

divorce. The secular courts recognized the man's contribution, while the Islamic court acknowledged the socio-economic changes that have allowed women to earn and acquire property during marriage, thus enabling them to retain ownership after the marriage ends. These developments highlight a shift towards emphasizing equity rather than strict equality in determining contributions and sharing property after divorce. The main objectives of this study are: (i) to explore the trends in the development of the concept of matrimonial property in both Ugandan and Islamic laws, and (ii) to establish the nexus between the approaches taken in both legal systems to promote a harmonious practice of Islamic law in a secular country like Uganda.

This study used a qualitative approach to explore the trends in the conceptualization of matrimonial property in Uganda in the secular and Islamic laws. This was achieved through reviewing both substantive and case laws to unveil the judges' considerations of what constitutes matrimonial property and their basis in determining its distribution at dissolution of marriage. Data were collected through observation, in-depth study and analysis of written material reflecting on theoretical concepts used in this study.

## 2. The Concept of Matrimonial Property in the Ugandan Laws

The evolution of the concept of matrimonial property in Ugandan law has undergone several stages, beginning with its recognition in international legal instruments and progressing through its incorporation into national laws and its application in case law. Uganda is a signatory to various international human rights instruments, including those that protect economic, social, and cultural rights (ESCRs), such as the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the African Charter on Human and Peoples' Rights. These instruments safeguard a range of rights, including the rights to health, water, education, housing, food, work, and social security (Mbaziira, 2013). Article 33(4) of the Ugandan Constitution guarantees women the right to

equal treatment with men, ensuring they enjoy equal opportunities in political, economic, and social activities.

The concept of matrimonial property is recognized in international, regional, and local legal frameworks. Article 17 of the Universal Declaration of Human Rights affirms that "everyone has the right to own property alone as well as in association with others." Uganda ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1985, and its provisions were incorporated into the 1995 Constitution (Acfode, 2014). Article 16(h) of CEDAW mandates that parties provide "the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment, and disposition of property, whether free of charge or for a valuable consideration." Although CEDAW does not explicitly mention the division of property during the dissolution of marriage, its General Recommendation No. 21 on Marriage and Family Relations addresses this by advocating for "equality in marital property during a marriage or long-term relationship and when that marriage or relationship ends."

Article 31(1) of the 1995 Constitution of Uganda, as amended, is the primary provision concerning matrimonial property at the dissolution of marriage. It states that "Men and women of the age of eighteen years and above have the right to marry and to found a family and are entitled to equal rights in marriage, during marriage, and at its dissolution." In 2004, Uganda became the 24th State to ratify the Maputo Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. Article 7(d) of the Maputo Protocol stipulates that "in case of separation, divorce, or annulment of marriage, women and men shall have the right to an equitable sharing of the joint property deriving from the marriage."

Referring to this provision, the Norwegian Supreme Court, in a landmark ruling, held that: "The acquisition of the house was financed with the man's income and he had physically contributed directly to its construction, but his wife was occupied with taking care of the house and their three young children. In my view,

this is what made it possible for the man to put so much work into the construction. When spouses practice such a division of labor, it leads to the wife being cut off from paid work and from any great physical participation in the construction business. The wife can be said to have helped the family get their own home, and legally I find it inappropriate to regard this effort as insignificant in relation to the man's efforts in acquiring the property."

This ruling established the principle in Norwegian law that women should be entitled to an equal share of matrimonial property, even if they have not contributed substantially to its acquisition. This principle has since been applied in many court decisions and was codified in Article 31(1) of the 1995 Constitution of Uganda, which is the leading provision for the wife's entitlement to matrimonial property at the dissolution of marriage.

The definition of matrimonial property was clarified in the case of *Muwanga v. Kintu* (High Court Divorce Appeal No. 135 of 1997). Justice Bbosa observed that "Matrimonial property is understood differently by different people. There is always property which the couple chose to call home. There may be property acquired separately by each spouse before or after marriage. Then there is property which a husband may hold in trust for the clan. Each of these should, in my view, be considered differently. The property to which each spouse should be entitled is that property which the parties chose to call home and to which they jointly contribute." The court in this case adopted a broader view of non-monetary indirect contributions, following the approach of the Court of Appeal of Kenya in *Kivuitu v. Kivuitu* (East African, 1990–1994), where Justice Omolo found that the wife indirectly contributed to household expenses, preparation of food, purchase of children's clothing, and general family welfare. This contribution was deemed substantial, entitling her to an equal share in the couple's joint property. These cases recognized not only a spouse's direct or indirect monetary contributions but also non-monetary contributions that enable the other spouse to acquire or develop the property in question.

In *Mayambala v. Mayambala* (High Court Divorce Cause No. 3 of 1998), the wife's interest in the matrimonial home was established at a 70% share. Similarly, in *Kagga v. Kagga* (High Court Divorce Cause No. 11 of 2005), the Court extended the wife's entitlement to matrimonial property by recognizing both direct and indirect contributions as the basis for sharing property at the dissolution of marriage. Justice Mwangusya observed: "Our courts have established a principle that recognizes each spouse's contribution to the acquisition of property, whether direct, where the contribution is monetary, or indirect, where a spouse offers domestic services. When distributing the property of a divorced couple, it is immaterial that one of the spouses was not as financially endowed as the other. This case clearly showed that while the first respondent was the financial muscle behind all the wealth they acquired, the contribution of the petitioner is no less important than that made by the respondent."

In this case, the Court ordered the registration of a 50% interest in the parties' matrimonial house and the transfer of several other houses in favor of the wife, despite the Judge's finding that the wife had only rendered domestic services, while the respondent husband was the "financial muscle" behind all the wealth. A similar position was held in *Sempiga v. Sempiga Musajjawaza* (High Court Divorce Cause No. 007 of 2005 (Unreported)), where the Court awarded the wife a 50% share in a farm measuring 154 acres.

Similarly, in *Muthembwa v. Muthembwa* (East Africa 2002, 186), the Court of Appeal of Kenya rejected the appellant husband's argument against awarding the wife a 50% share in all the matrimonial home, other properties, and businesses. The Court held that the issue of whether the wife had contributed to the acquisition of the properties was a question of fact. It further held that where it was impracticable to take accounts to determine the respective contributions of the parties to the management of a home, a rebuttable presumption of equal contribution arose.

These judgments align with English cases such as *Chapman v. Chapman* (All England Law Reports 1969, 476), where the wife was held to have acquired an equal share in the property, even though she had not made an equal cash contribution to its acquisition. The Court found that the husband and wife had pooled their financial resources to purchase their house without reserving any special interests.

However, this position changed in the case of *Julius Rwabinumi v. Hope Bahimbisomwe* (Civil Appeal No. 10 of 2009), where the Court made orders for the sharing of the parties' property on 18th June 2007. At the appellate level, the Court of Appeal distinguished between properties solely acquired by the appellant before his marriage to the respondent and those acquired after marriage, which became jointly owned. For example, although the trial judge and the justices of the Court of Appeal found that the matrimonial house at Kisaasi was the home where the parties had lived during their short-lived marriage, they allowed the appellant (husband) to retain the house as his separate property because he had acquired it before the marriage. He was only ordered to refund the respondent her direct monetary contribution of UGX 3,782,000/=, which she made towards improving the house. The same applied to the land and a house at Mparo in Kabale district, which the appellant had bought before his marriage to the respondent, despite the respondent's claim that she had contributed money for roofing and purchasing the doors of the house. The Court ordered the appellant to share with the respondent only those properties where the respondent testified that she made cash contributions toward their purchase, or where there was evidence from both parties that they jointly owned the business and both contributed financially. These properties were acquired during the subsistence of the parties' short-lived marriage.

The most recent landmark decision in this area is *Ambayo Joseph Waigo v. Aserua Jackline* (Civil Appeal No. 0100 of 2015–2022). On 15th November 2022, the Ugandan Court of Appeal ruled that it is no longer automatic for a divorcing couple to receive an equal half-share of matrimonial property. Instead, the division depends on

each spouse's contribution. In this divorce case, the matter was initially heard by the High Court, where the parties settled their disputes by consent. The trial judge, Catherine Bamugemereire, issued a decree dissolving the marriage and, after assessing the evidence regarding the wife's contribution to the matrimonial home in Mutungo, Nakawa Division, Kampala, ruled that: "Whereas the contract upon which the matrimonial home stands is in the appellant's (husband's) name alone, the house nonetheless belonged to the couple jointly in equal shares."

Justice Bamugemereire ordered that the house be sold or valued and 50% of the value granted to the wife, who had worked hard to acquire it. The husband, dissatisfied with the High Court's decision, appealed to the Court of Appeal. The main task of the Court of Appeal was to determine how the trial judge had assessed the wife's contribution to the matrimonial property before concluding that she deserved a 50% share of it.

Upon reviewing the valuation of the non-monetary contribution made by the wife, the Court of Appeal found that the trial judge had not considered the husband's role in educating the wife from primary level to obtaining several certificates and driving skills. This transformative value increased her life opportunities, which the Court of Appeal viewed as a form of payment that reduced the quantum of her claim for unpaid work. Justice Kibeedi concluded: "After re-evaluating the evidence before the trial court and trying my best to weigh the peculiar circumstances of this case, while not losing sight of the principles discussed in detail herein above, I would declare that the respondent (wife) is entitled to a 20% share in the suit property." The other two justices of the Court of Appeal agreed with this position, making it a unanimous decision of the Court of Appeal of Uganda.

### 3. The concept of Matrimonial Property in Islamic Law

Marriage in Islam is a matrimonial relationship between a man and a woman, providing legal authorization for procreation (Syeda et al., 2018). Under Islamic law, a wife's

economic rights in marriage emerge upon the conclusion of the marriage contract, which obliges the husband to pay dowry (Mahar) to the wife (Mohamed, W. M. A., & Halim, M. M. A. (2021). This is not only a sign of love but also a demonstration of his commitment, ability, and willingness to support her materially. The Islamic family system divides marital duties, assigning responsibilities to the wife, which, though non-monetary, contribute substantially to the family's economic welfare. The wife is primarily tasked with house management, in exchange for her entitlement to maintenance from her husband. This arrangement may limit her direct financial contributions to the family's economic welfare. However, according to the Shafi'i School of thought which is the official *madh-hab* in Uganda, socio-economic dynamics can necessitate her involvement in lawful economic ventures within or outside the home. (Al-Shirbīnī, 1994).

Islamic law obliges the husband to provide for the wife's material needs, as affirmed by the Qur'an: "*Men are the protectors and maintainers of women because Allah has given one more (strength) than the other, and because they support them from their means...*" (Al-Nisā': 34). Classical Islamic jurisprudence, developed between the 8th and 12th centuries, did not contain the concept of matrimonial property because the Qur'an made men responsible for protecting and providing for their families (Al-Nisā': 34). Consequently, all property was generally considered to be acquired and owned by men, and no provision was made for property division at the dissolution of marriage. Moreover, the Islamic perspective of ownership (*milkiyyah*) attributes property to the individual who can provide proof of ownership, rather than to a status held by a particular individual.

Nonetheless, the concept of matrimonial property can be traced in classical Islamic jurisprudence from two perspectives: (i) the obligation of a divorced wife to relinquish part of the dowry after divorce, and (ii) the divorcing husband's obligation to pay alimony after divorce. Under the first perspective, a wife must return 50% of the dowry if the husband initiates divorce before consummation or valid retirement (*al-Khawwah al-Ṣāḥihah*), according to some scholars of the Hanafi, Shafi'i,

and Hanbali schools of thought (Ibn 'Ābidīn, 1966, Al-Māwardī, n.d, Al-Mardāwī, 1957). This is supported by the Qur'an: "*And if you divorce them before consummation, but after the fixation of dower, then half of the dower is due to them*" (Al-Baqarah: 237). Similarly, a wife must return 100% of the dowry if she initiates divorce before or after consummation, as established in the precedent of Rabī'ah, the wife of Thābit bin Qays, who returned her dowry as part of the *Khul'* process (al-Bukhārī, 1987).

Under the second perspective, the Qur'an provides for a wife's entitlement to alimony (*Matā' or Mut'ah Talaq*) in the event of a divorce initiated by her husband: "*For divorced women, maintenance (should be provided) on a reasonable scale. This is a duty on the righteous*" (Al-Baqarah: 241). "Maintenance" in this verse refers to *Mata'*, which the Shafi'i scholars define as the property the husband must provide to his departing wife due to divorce (Al-Jumal, 1789). Though the text does not explicitly address the wife's legal entitlement to the husband's property, the Shafi'i School (Al-Shirbīnī, 1994), unlike the Hanafi (Al-Sarakhsī, 1993), Maliki (Al-Mudawwanah, 1994) and Hanbali (Ibn al-Qudāmah, 1992) considers her entitlement obligatory. This view is supported by the majority of contemporary scholars, as explained by Al-Zuhaylī (1987).

Islamic law does not specify a percentage of the husband's property to which the wife is entitled after divorce but states that the amount should be reasonable, taking into account factors such as the financial status of both spouses, the wife's contribution, and the length of the marriage. If the parties cannot agree on a reasonable amount, the Islamic court must intervene to ensure a fair and just decision.

In conclusion, the dowry, though exclusively owned by the wife at the inception of marriage, is treated as matrimonial property that is "shared" upon the dissolution of marriage. Likewise, *Matā'* is a payment from the husband's exclusive ownership, subject to sharing after a divorce initiated by him. Contemporary Muslim scholars trace the concept of matrimonial property to the Qur'an, which establishes women's right to own property

independently: *“For men is a share of what they have earned, and for women is a share of what they have earned”* (Al-Nisā’: 32). The Qur’an also alludes to the sharing of matrimonial property after divorce: *“And do not wish for that by which Allah has made some of you exceed others. For men is a share of what they have earned, and for women is a share of what they have earned. And ask Allah of His bounty”* (Al-Nisā’: 34).

Recognizing the legal gap in classical Islamic jurisprudence, some Muslim countries, such as Malaysia and Brunei, have codified the concept of matrimonial property in their laws. For example, Section 2 of the Islamic Family Law of the State of Selangor, Malaysia, defines matrimonial property as that which is obtained through joint effort by both spouses during marriage, while Section 122(5) of the Islamic Family Law (Federal Territories) Act extends this definition to include property owned by one party before marriage if it has been substantially improved by the other spouse or through joint effort. The Islamic Family Law Act of Brunei similarly mandates the division of property acquired during marriage, even if by the sole effort of one party.

In Uganda, the case of *Bashaar V. Aminata* (Civil Suit No. 076 of 2022) became the first to address the division of matrimonial property in an Islamic divorce petition. The court ruled that property directly contributed to or purchased by the wife, including evidence such as sales agreements, should be returned to her, even if the husband had his name on property documents. The decision established important precedents in the context of matrimonial property under Islamic law.

#### **4. The comparison between the Ugandan law and Islamic Law**

The concept of matrimonial property is based on the spouses’ contributions to the family’s economic welfare during marriage, with the aim of ensuring justice and fairness in the distribution of property after divorce, as outlined by international and national laws.

Traditionally, and under Islamic law, the responsibility of providing for the family was placed on the man, while the woman was responsible for managing household affairs and relied on the husband for financial support (Haleema et al. 2023). This arrangement often placed the husband in a stronger position regarding ownership and left the wife at a disadvantage when claiming a share of matrimonial property. To address this issue, both Ugandan and Islamic laws offer compensatory measures, such as granting a wife a 50% share of matrimonial property under Ugandan law and a reasonable alimony under Islamic law upon the dissolution of marriage.

However, as traditional roles shifted due to globalization and the push for women’s economic empowerment—leading women to participate more actively in commercial activities alongside men—the legal frameworks could no longer rely on the simplistic 50-50 distribution. Instead, the law had to adapt to contemporary realities in terms of earnings and ownership. This shift is reflected in the recent Court of Appeal ruling in *Ambayo Joseph Waigo v. Aserua Jackline*, which emphasized equity over equality in property distribution. This approach aligns with Shariah law’s principle of reasonable entitlement, which also guided the ruling in *Bashaar v. Aminata*.

A similar stance was taken in the High Court case of *Uhiriwe Peace v. Kuuku Kaggwa Paul* (Divorce Cause No. 118 of 2017), where the petitioner sought to have several properties considered matrimonial property and subject to a 50-50 division. In her judgment dated April 25, 2024, Hon. Justice Alice Komuhangi Khauka rejected the claims due to a lack of evidence showing the petitioner’s ownership or direct financial contribution to the acquisition of these properties.

This position is consistent with the case of *UMI vs. UMI*, where the Kenyan court observed that the equality contemplated by Article 45(3) of the Constitution leaned more towards equity in the division of property during divorce than strict equality. The court emphasized that each partner should receive what they deserve based on their contribution to the property, whether monetary or

non-monetary. The judgment warned that an automatic 50:50 split could undermine the institution of marriage by encouraging individuals to seek half of the marital property without making a substantial contribution. This interpretation of equality, therefore, reflects fairness rather than a rigid application of equal shares.

#### 4. Conclusion

The two most recent cases in Ugandan and Shariah law demonstrate an equity-based rather than equality-based approach to determining and distributing matrimonial property upon the dissolution of marriage. This contemporary trend reflects current socio-economic dynamics, where both husbands and wives actively contribute to the family's socio-economic welfare and assume shared marital roles. This aligns with the Shariah provisions in the Qur'an, specifically 6:132, which states, "And for all are degrees from what they have done," and 2:279, which instructs, "Deal not unjustly, and you shall not be dealt with unjustly."

This position is further supported by the resolution of the Islamic Fiqh Council, which issued a decision regulating financial responsibilities between spouses. It states: "If the wife actually contributes through her money or her work in owning a matrimonial house, real estate, or a business, she has the right to share ownership of that house or project in proportion to her financial contribution" (Islamic Fiqh Council, Resolution 144).

However, Shariah law also takes into account the traditional role of the wife, which often limits her direct involvement in economic activities. In recognition of her non-monetary contributions, alimony is mandated as compensation, and the amount is determined by a Shariah Court. Factors such as the duration of the marriage, the socio-economic status of both parties, and other relevant considerations are taken into account when assessing her contribution.

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