



TOPE ADEBAYO LP

A blurred background image of a smiling man and woman. In the foreground, their hands are in focus, holding a silver key with a house-shaped keychain.

THE 50/50 MYTH:
UNPACKING SETTLEMENT
OF PROPERTIES IN NIGERIAN
MATRIMONIAL CAUSES

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INTRODUCTION

The dissolution of marriage often presents not only emotional and psychological challenges but also significant legal and financial complexities. One of the most contentious issues that arises during divorce proceedings is the question of property distribution between the parties. The division of matrimonial properties often sparks contentious debates about fairness, equity, and the contributions of each spouse.

In popular discourse, there is a widespread belief that spouses are entitled to an equal share of the properties acquired during the subsistence of the marriage. However, this belief, while emotionally appealing, does not reflect the legal position in Nigeria, which is far more nuanced. A recurring question, therefore, is whether a spouse is automatically entitled to an equal share of matrimonial property solely by reason of the marital relationship, without the necessity of establishing any specific contribution (financial or otherwise) to the acquisition or maintenance of such property. In Nigeria, the distribution of marital assets upon dissolution of marriage is guided by a combination of statutory provisions and judicial discretion, often influenced by the peculiar facts of each case.

This article examines the legal framework governing the division of property upon the breakdown of a marriage, interrogating whether parties are, as a matter of law, entitled to an equal share or whether the principle of fairness takes precedence over strict equality.

MATRIMONIAL PROPERTIES AND THE LEGAL FRAME WORK FOR THEIR SETTLEMENT IN NIGERIA

Matrimonial property refers to the assets and liabilities accumulated by either or both spouses during the duration of a marriage and used for the joint benefit of the couple and their family.¹ The concept reflects that marriage is a joint venture and recognizes that both spouses have a shared interest in these assets, which are considered shared property regardless of individual contributions.²

Nigeria operates a dual legal system, encompassing both statutory and customary law. Where parties are married under the Marriage Act, the applicable statutory regime is the Matrimonial Causes Act (Cap M7, Laws of the Federation of Nigeria 2004) (“MCA”), which governs divorce and ancillary reliefs, including the settlement of matrimonial property.



[1] This includes the real and personal properties, bank accounts, business assets, and other assets generated during the marriage. In Nigeria, the term “matrimonial property” is not expressly defined in the Matrimonial Causes Act (Cap M7, Laws of the Federation of Nigeria, 2004). However, through judicial interpretation and equitable principles, it has come to encompass both movable and immovable property acquired during the marriage by either or both parties, and intended—whether expressly or impliedly—for their mutual use or benefit. Matrimonial property may also covers property registered in the name of one spouse, where the other can demonstrate a significant contribution—monetary or otherwise—to its acquisition, preservation, or improvement.

[2] S. Clever. Matrimonial Property: What You Need to Know. Published by Dandy Law, 5th April 2022, <https://dandylaw.com/matrimonial-property-what-you-need-to-know/> (Accessed on 22nd May 2025).



In determining whether a spouse is entitled to an equal share of matrimonial property solely by virtue of marriage, it is crucial to consider the relevant legal frameworks. However, it must be noted that the MCA is notably silent on the formula or principle to be applied in the division of matrimonial property upon divorce. Thus, courts have developed case law to fill this legislative lacuna, relying on equitable principles and judicial discretion. This article focuses on the statutory position in Nigeria as addressed below.



NIGERIA- THE GENERAL RULE: NO AUTOMATIC EQUAL SETTLEMENT

In Nigeria, the Courts are given a wide range of discretion in matters of settlement of property in matrimonial cases. Section 72 of the MCA authorizes courts to make property adjustment orders as deemed “just and equitable.” This position is further grounded by the provisions of SECTION 17 OF THE MARRIED WOMEN'S PROPERTY ACT which confers on the Judge the power to make orders in respect of property in

dispute as he thinks fit and such order must be fair, just and equitable. However, like in all matters of exercise of discretion of court, it must be done judicially and judiciously based on the circumstances of a particular case.³

In MUELLER V. MUELLER⁴ the Court of Appeal succinctly surmised this position when it held at that:

"On the partitioning of the joint matrimonial property, I also agree that it must be done on the basis of equity. After all, EQUITY favours true equality, both of rights and liabilities, dividing burdens and benefits in equal shares. Perhaps, that is why equity always leans to tenancy in common instead of joint tenancy. A just order which Courts, including appellate Courts, must always do, is what my learned brother has done in the lead judgment; the undeveloped portion of the land going to the appellant, while two of the three houses on the land shall be retained by the respondent - equality and goodness find expression in this. Let it be said that that which is equal and good is the law of laws - the Latin Maxim is Aequum et Bonum est Lex Legum."

Before arriving at what is just and equitable in the settlement, the Court must first of all determine if the property is a joint or matrimonial property. The guideline adopted by the court to answer this poser is a determination, based on the facts before the court, whether or not the said property was acquired by the parties or 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.⁵ In essence, it is not sufficient to only establish that the

[3] SEE BELLO V. YAKUBU (2008) 14 NWLR (PT. 1106) 104.

[4] (2005) LPELR-12687(CA),

[5] See BABAKEMI V. CHINYERE (2021) LPELR-52894(CA)



property was acquired by both or one of the parties during the pendency of the marriage, Nigerian courts, particularly in statutory marriages, often require a claimant to establish the contribution of the parties to the acquisition of the property.

The decision in **ETEBU V. ETEBU**⁶ exemplifies this principle, holding that a spouse seeking a share in matrimonial property must prove their financial input. While contribution remains central, the realities of modern marriage and family life often inform a more flexible judicial attitude. In Etebu⁷ case mentioned above, it was held⁸ that:

*“... The evidence before the Court is that the Appellant in his oral testimony maintained that the Respondent has contributed no kobo in the building of the matrimonial home. The Respondent on the other hand testified that she has been giving the Appellant money to complete building the matrimonial home. But it is to be noted that the Respondent could not say how much she contributed or better still lay any evidence of such contribution apart from her ipsi dixit. The trial Court proceeded to award one half of the matrimonial home to the Respondent and relied on the case of **OGHOYONE V. OGHOYONE** (supra). The position of the law as regards settlement of properties under matrimonial causes is captured in Section 72 of the Matrimonial Causes Act... Now by the above provision, settlement of properties is based on what the Court considers just and equitable. In other words, a wide discretionary power is given to the Court by Section 72 of the Act. However, like in all matters of exercise of discretion, it must be done judicially and judiciously based on the circumstances of a particular case... There is*

no further evidence from the Respondent of all the monetary contribution she claimed to have made apart from her ipsi dixit. The Appellant had earlier testified that the Respondent contributed nothing to the construction of the property in question. Therefore, the Respondent's bare assertion ought to be substantiated and having not been substantiated, it remains in the realm of an assertion and cannot be regarded as a credible evidence capable of conferring benefit to the maker and worthy of acceptance by the trial Court.”

The foregoing analysis of the Court of Appeal's decision underscores a critical principle: the trial court failed to exercise its discretion judicially and judiciously as mandated under Section 72 of the Matrimonial Causes Act. The decision, as reached, lacked the requisite evidentiary foundation necessary to arrive at a just and equitable outcome. In particular, the absence of credible evidence establishing the Respondent's actual contribution to the acquisition of the property rendered the court incapable of making a fair and legally sustainable determination on the matter.

At Tope Adebayo LP, we recently represented a Petitioner in matrimonial proceedings before the High Court of Lagos,⁹ where we successfully leveraged our expertise in matrimonial disputes to establish, among other things, the Petitioner's (wife's) contributions to a contested property. This evidence proved pivotal. The court, in its judgment, found that the property in question constituted matrimonial property and accordingly ordered that it be sold, with the proceeds shared equally (50/50) between the Petitioner and the Respondent.

[6] (2018) LPELR-46250(CA)

[7] Ibid 5

[8] (PP 47-51 PARAS. A)

[9] Suit No.: EPD/8192^{WB}/2021 (unreported). Judgment was delivered on 13th January 2025.



It bears repeating that the Supreme Court of Nigeria and the Court of Appeal, in a consistent line of authorities, including the **Etebu**¹⁰ case referenced above—have firmly held that marriage does not confer an automatic entitlement to an equal share of matrimonial property. The decisive factor remains proof of contribution, whether direct (e.g., financial input) or indirect (e.g., emotional support, domestic responsibilities, or child care).

In a recent decision, the Court of Appeal in **AGUOLU V. AGUOLU**¹¹ provided more clarity regarding the conditions under which a party in matrimonial proceedings may claim a share in matrimonial property. In this case, the central issue was whether mere subsistence of marriage entitles a spouse to a 50% share in matrimonial property without proof of contribution. The Court enunciated that while the Appellant successfully established that the marriage had broken down irretrievably in accordance with Section 15 of the Matrimonial Causes Act, she appeared to assume that the same grounds

sufficed for the settlement of property under Section 72 of the Act. The Court emphasized the distinction between dissolution of marriage and the settlement of property and reiterated that entitlement to matrimonial property does not automatically arise upon dissolution of marriage, nor does it support an assumption of equal distribution absent evidence of contribution.

That said, it is now the state of the law that, the nature of contribution to be made by one party to the purchase and development of matrimonial property need not be by cash alone. Infact, the court has held that the contribution could be moral. In **IBEABUCHI V. IBEABUCHI**¹² the Court of Appeal held thus:

“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 - Sanders Vs Sanders (1967) 116 CLR 366, Watchel Vs Watchel (1973) All ELR 829, H Vs H (Financial Provisions: Marriage) (1975) 1 All ER 367, Kafi Vs. Kafi (1986) 3 NWLR (Pt.27) 175. 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, 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.” (underlining ours)



[10] Ibid 5

[11] (2025) LPELR-80269 (CA) - <https://lawpavilion.com/blog/whether-a-party-in-a-matrimonial-proceedings-is-entitled-to-an-equal-share-of-matrimonial-property-solely-by-virtue-of-marriage-without-proving-contribution/>

[12] (2016) LPELR-41268(CA).



Another interesting application of this principle was in the case of **KAFI V. KAFI**¹³ where after dissolving the marriage based on the wife's Cross-Petition, the Court in the exercise of its powers under Section 72 of the Matrimonial Causes Act made an order for settlement of certain property in favour of the wife and children of the marriage. On appeal by the husband, it was argued that, there was no evidence that the wife was a joint purchaser or developer of the property with the husband. In rejecting that argument, the Court of Appeal held that, evidence of joint purchase or development was not necessary in making such an order. In taking that view, the Court considered that the wife had actively managed the husband's business at Ilesha when the husband moved to Lagos to establish another shop. The wife also actively participated in the supervision and construction of the husband's properties in Lagos. Furthermore, the wife and the husband jointly negotiated and purchased the plot of land on which the property was built; and finally, that the wife provided the necessary support for the business activities of the husband.

Also, in **ANIETO v. ANIETO (2019) LPELR-47223(CA)**, evidence was led at the trial Court to show that the Appellant married the Respondent when she was in junior secondary school. The Appellant who was much older, convinced her, barely a fourteen (or sixteen) years old teenager to abandon her academic pursuit and therefore her future. The evidence led also showed that the Respondent actively and physically participated in the running of the Appellant's business which experienced sudden increase in the course of the marriage. The financial status of the business and the family



also boomed. Most importantly, it was at that time that the Appellant purchased and developed the plot of land covered by the Certificate of Occupancy (Exhibit "P2") in their joint names. The Court 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 to accede to the selfish plan of the Appellant to deny her the fruit of what she had sacrificed her future to achieve. This Court, being of law and equity, will not allow that to happen. The learned

[13] (1986) 3 NWLR (PT. 27) 175,



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."

Interestingly, the courts in Nigeria, applying equitable doctrines such as resulting trusts¹⁴ and constructive trusts, have recognized that title to property is not conclusive in determining ownership in matrimonial disputes. Rather, the court is empowered to examine the surrounding circumstances to ascertain whether one spouse holds legal title on behalf of both parties, based on the other spouse's direct or indirect contributions.¹⁵ This flexible approach has enabled courts to do substantial justice, particularly in cases where one party, often the wife, has contributed through domestic labour, child-rearing, or moral support that enabled the other party to generate income or acquire property.



In summary, to succeed in a claim for matrimonial property settlement, a party must establish the following:

1. That the property in question qualifies as matrimonial property.
2. That he or she made contributions, whether financial or otherwise, to its acquisition or improvement.
3. That it would be just, fair, and equitable to order a settlement in his or her favour.

Relying on both Nigerian and English precedents such as **FRIBANCE V. FRIBANCE**¹⁶ and **ULRICH V. ULRICH**,¹⁷ the Court of Appeal in the Aguolu¹⁸ case reaffirmed that the allocation of family assets depends not on rigid formulas but on the evidence of joint efforts and intentions.

In the Fribance¹⁹ case, the court referred to the decision of Denning L. J. (as he then was) at 360 CA, where it was enunciated 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 round.... The title to the family assets does not depend on the mere chance of which way round it was. It does not depend on how they happened to allocate their expenditure. The whole of their resources were expended for their joint benefit and the product should belong to them jointly. It belongs to them in equal shares."

[14] OKERE V. AKALUKA (2014) LPELR-24287(CA) (PP. 56-67 PARAS. E)

[15] Ibid

[16] (1957) 1 All ER 357

[17] (1968) 1 All ER 67

[18] Ibid 9

[19] Ibid 10



Furthermore, building on the position articulated by the Court in *Fribance*,²⁰ the Court of Appeal in *Aguolu*²¹ case further held that:

“Nevertheless, in the instant appeal, there is nothing before the Court to demonstrate that that the parties who have lived apart for more than 22 years should share everything one of them owns 50-50.”

Therefore, the above underscores the need for parties seeking property settlement in matrimonial disputes to present cogent, credible evidence of their contributions. Absent such proof, courts are unlikely to make favourable orders, even where the marriage has been validly dissolved.

EXCEPTIONS TO THE GENERAL RULE ON AUTOMATIC EQUAL SETTLEMENT

While the partnership principle generally supports the equal sharing or settlement of matrimonial properties in many cases, subject to proof of contribution, certain exceptions apply, such as prenuptial or postnuptial agreements and non-matrimonial properties (i.e., properties acquired before marriage and properties received as a gift or inheritance).²²

1. **Prenuptial or Postnuptial Agreements:** Where the parties have entered into a valid prenuptial or postnuptial agreement that delineates how property should be distributed upon dissolution of the marriage, courts will typically uphold such arrangements, provided they are fair, entered into freely, and do not offend public policy.
2. **Non-Matrimonial Property:** Assets acquired by either party before the marriage, or those received during the marriage by way of gift, inheritance, or personal settlement, may be excluded from the pool of divisible matrimonial property particularly where such assets have not been mingled or used for the mutual benefit of the parties during the marriage.

These exceptions highlight the need for a case-by-case assessment and underscore that the principle of equal settlement is not rigidly applied, but rather subject to judicial discretion based on the specific facts and equities of each case.

CONSTITUTIONAL CONSIDERATIONS AND GENDER EQUALITY

The 1999 Constitution of the Federal Republic of Nigeria (as amended) guarantees the right to freedom from discrimination²³ and the right to dignity of the human person.²⁴ These constitutional safeguards may be invoked to challenge the unequal treatment of spouses, particularly women, in the distribution of matrimonial property.

[20] Ibid 10

[21] Ibid 9

[22] [Shady Clever Matrimonial Property: What You Need to Know by - Dandy Law](https://dandylaw.com/matrimonial-property-what-you-need-to-know/) <https://dandylaw.com/matrimonial-property-what-you-need-to-know/> (Accessed on 29th May 2025)

[23] Section 42

[24] Section 34



However, the enforcement of these rights within the context of matrimonial proceedings remains underdeveloped. Until appellate courts explicitly tie constitutional values to property division, the existing paradigm requiring proof of contribution is likely to persist.

CUSTOMARY LAW PERSPECTIVE

Under customary law, which still governs many marriages in Nigeria, the issue of matrimonial property is often male-centric. Traditionally, properties acquired during marriage belong to the husband, unless a clear contribution by the wife is established. Women's contributions are often undervalued or ignored.

The courts have, however, increasingly applied equitable principles to prevent injustice under customary law. For instance, in **SUBERU V. SUNMONU**,²⁵ the court acknowledged that a woman who contributes towards the acquisition of property is entitled to a share, even under customary law.

OUR ANALYSIS AND ARGUMENT

It is arguable that the current legal requirement for proving contribution, while rooted in equity, does not adequately reflect the realities of many modern marriages where one spouse, often the wife, may sacrifice economic opportunities to support the home.

There is a strong case for statutory reform that codifies principles for the division of matrimonial property and explicitly recognizes non-financial and indirect contributions. Without such legislative clarity, courts will continue to rely on discretionary and case-specific determinations, leading to inconsistent outcomes.

Furthermore, the law must evolve to recognize marriage as a partnership of equals, where the

roles played by each spouse, financial or otherwise, are equally integral to the welfare and growth of the family unit.

CONCLUSION

The notion that spouses are automatically entitled to an equal 50/50 share of matrimonial property upon dissolution of marriage is a widespread misconception. As established by a line of appellate decisions—including **AGUOLU V. AGUOLU (SUPRA)**,²⁶ settlement of matrimonial property under Section 72 of the MCA is not governed by rigid equality but by judicial discretion, guided by principles of fairness, justice, and equity.

Critically, the courts require credible evidence of a party's contribution (whether financial or non-financial) before granting any form of proprietary settlement. The dissolution of a marriage, though a catalyst for invoking Section 72 of the MCA, does not by itself entitle a spouse to an automatic share in the property of the other. The burden of proving joint acquisition, contribution, or the equitable basis for settlement remains central to any claim.

While the partnership principle may support a presumption of equality in some jurisdictions, Nigerian law tempers that presumption with the realities of each case. Furthermore, exceptions such as prenuptial agreements and non-matrimonial property further undermine the idea of blanket equality.

Ultimately, this area of law underscores the need for careful legal strategy and evidence-driven advocacy. Parties seeking proprietary relief must do more than rely on the subsistence of marriage; they must demonstrate entitlement through contribution and equitable considerations. The 50/50 split, though appealing as a simplified ideal, remains a myth unless substantiated by law and fact.

[25] (1957) WRNLR 95

[26] *Ibid* 10



PRACTICE KEY CONTACTS



HARRISON OGALAGU
PARTNER



JOSEPH ANYEBE
SENIOR ASSOCIATE



AKINBOBOLA AKINLUYI
SENIOR ASSOCIATE

TALP's Dispute Resolution Department

For further enquiries, log onto www.topeadebayolp.com

Do you need to get in touch with us, to know more on how we can help you and your business? Kindly contact us by using any of the details provided below:

TOPE ADEBAYO LP

3rd Floor, The Phoenix, 31 Mobolaji Bank Anthony Way, Ikeja Lagos, Nigeria.

p: +234 708 869 9174, +234 813 532 1156

e: info@topeadebayolp.com

w: www.topeadebayolp.com

