

**REAPING WHERE YOU DID NOT SOW?": THE QUESTION OF NON-FINANCIAL
CONTRIBUTION IN THE SETTLEMENT OF MATRIMONIAL PROPERTY IN
*AGUOLU v. AGUOLU*¹)**

Dr. Hameenat Bukola Ojibara *

ABSTRACT

The settlement of matrimonial property is a critical issue that springs up or accompanies a suit for dissolution of marriage. One of such is the current case of Aguolu v Aguolu (2025) LPELR-80269 (CA) decided in accordance with Section 72 Matrimonial Causes Act 2004 which provides for the settlement of matrimonial property. Despite that the Court takes into cognisance the evolving position of the Nigerian courts beyond strict financial contribution, thereby considering principles of equity and partnership, proof thereof is important in determining settlement. Thus, marital status does not automatically convey a right of entitlement to matrimonial property. This case review therefore examines the Court of Appeal's decision in Aguolu v Aguolu, on the settlement of matrimonial property under the statutory law at the instance of dissolution of marriage. The review analyses the Court's reasoning on issues for fairness and balancing equality interests when there is non-financial contribution to matrimonial property. It further observes that women's property should equally be a basis for determination before the court considering that the Matrimonial Causes Act is not gender specific in the instance of matrimonial property settlement. Aguolu v Aguolu's case is relevant in reinforcing the shifting Nigeria's jurisprudence from a rigid non-financial equity on property rights at divorce, while balancing the fact that marital status is not sufficient to entitle a spouse to 50/50 share of matrimonial property, and that claimants must still adduce evidence of their contribution. This review recommends the need for guidelines in determining equitable distribution of matrimonial property.

¹ (2025) LPELR-80269 (CA)

* LL. B, BL, LL.M, Ph.D.; Faculty of Law, University of Ilorin, Nigeria. Email: - ojibara.hb@unilorin.edu.ng. 08066864518

Keywords: *Aguolu v Aguolu*, Divorce, Family law, Matrimonial property, Spouse, Matrimonial Causes Act

1.0 Introduction

The dissolution of marriage, though signifying the formal end of a legal union, often opens a contentious chapter in the lives of former spouses, especially when it involves the settlement of matrimonial property. How such disputes addressed depends to a large extent on the extant legal framework,² which shapes not only the substantive rights of the parties but also the procedural pathways available for enforcement.³ In Nigeria's tripartite family law legal framework comprising Statutory, Islamic, and Customary systems, the statutory regime, governed by the Matrimonial Causes Act (MCA),⁴ has become the primary area of controversy for these disputes among parties married under the Marriage Act.⁵ A major challenge of this statutory framework is its failure to clearly define what constitutes "contribution" to matrimonial property, thereby leaving the courts with expansive yet ambiguous discretion under Section 72 of the Matrimonial Causes Act. Under this provision, a spouse is generally entitled to a share of matrimonial property only if he or she has made such a "contribution." However, Section 72 also provides no guidelines or formulas for determining the division of property. As a result, the courts must decide not only what property is subject to division, but also how it should be shared, what constitutes an adequate or beneficial allocation to the parties and their children, and ultimately what outcome would be just and equitable. This wide discretion has led to varying decisions and opinions with respect to the settlement of property at divorce, and one such is that of the case of *Aguolu v Aguolu*.⁶

The case of *Aguolu v Aguolu* is a significant court decision that deals with family law, dissolution of marriage, and property settlement. Matrimonial suits relating to maintenance, custody of children, and settlement of property emanate after a suit for dissolution of

² Ojibara H.B. (2023): Identifying the Viability of Alternative Dispute Resolution Methods in the Resolution of Marital Disputes under Nigerian Family Laws Journal of Law and Social Policy, 5(1), 36-48. Published by Bahria University Law School, Islamabad

³ Ayenakin O, Kolade-Faseyi I and Akindejoye T, 'Enforcement of Judgments in Nigeria: Issues, Law and Challenges' (2021) 9(7) Global Journal of Politics and Law Research pp. 1-15.

⁴ CAP M7, Laws of the Federation of Nigeria 2004

⁵ CAP M6, Laws of the Federation of Nigeria 2004

⁶ (2025) LPELR-80269 (CA)

marriage has been instituted and or decided by the court. The *Aguolu*'s case is one and as such flows from the institution of a suit for dissolution of marriage in accordance with Section 15 of the Matrimonial Causes Act, but also an application for equitable settlement of matrimonial property. This is a relief that is technically ancillary, but often becomes the crux of post-marital litigation.⁷ However, while the dissolution of the marriage itself was uncontested, the main dispute centred on the division of property between the parties.

The decision of the Court of Appeal in *Aguolu v Aguolu* exposes the persistent challenges of the discretion granted to the courts in Section 72 Matrimonial Causes Act⁸ regarding distribution of matrimonial properties. The central question was the meaning of "contribution" to entitle a spouse to a share of the matrimonial property. Thus, should contribution only include direct financial contribution to acquiring the property in question while the marriage subsists or does it include "non-financial contribution". In this case particularly, the question was whether the wife, despite her non-financial contribution, was entitled to an equal share of the properties acquired during the marriage. The matrimonial properties alleged in this case all belonged to the petitioner/respondent and are referred to as matrimonial property because they were acquired by him during the subsistence of the marriage. The decision to award her only one out of several properties brings to the fore the Nigerian judiciary's enduring reluctance to treat marriage as an economic partnership in which both financial and non-financial contributions are equally recognised.

The major controversy in this case is whether a spouse's non-financial contributions should be recognised in determining their share of matrimonial property. If so, would that not amount to allowing a party to reap where they did not sow, given that such contributions are often intangible, difficult to quantify, and lack the explicit financial input required for acquiring the property? This case review examines the court's decision and the key issues that arose during the proceedings, there by accentuating the complexities of property settlement upon divorce. It also provides a detailed analysis of the legal principles and judicial interpretations that shape the current state of women's property rights in such proceedings.

⁷ CAP M.7, 2004.

⁸ Matrimonial Causes Act 2004

2.0 Facts and Decision

The parties to the suit got married on 14 February 1976 at the Catholic Church of St. Dominic's, Yaba, Lagos state. They lived together from 1976 to 1983 (seven years) and had two children, Chinedu and Chioma, born in 1976 and 1978, respectively. In 2015, the Petitioner instituted an action against the Defendant before the High Court, Ikeja⁹ for dissolution of marriage. The petition was filed on the grounds that the marriage had broken down irretrievably, especially because both parties had lived apart for 22 years. Also, that the defendant had behaved in such a way that the petitioner could not reasonably be expected to live with her.

The defendant, on the other hand, filed a cross-petition for dissolution of marriage on the basis that the petitioner had behaved in such a way that the defendant could not reasonably be expected to live with him, thereby alleging adultery and living apart for a period of 3 years. She however sought other ancillary reliefs to include: custody of the children, the sum of ₦79,600,000 (accumulated arrears for upkeep and sundry expenses for the children), school fees and related expenses going forward, ₦2,000,000 per annum for maintenance of the children, rent, 50 per cent-50 per cent proportion split of landed properties and further orders as the court deemed fit.

The trial judge made an order for a *decree nisi* on the basis that there was no subsisting marriage as the parties had lived apart for 22 years. However, for the settlement of the property relying on section 72 (1) and (2) Matrimonial Causes Act,¹⁰ the court made an order for one of the properties (a house) to be granted to the respondent.¹¹ The *ratio decidendi* is on the core principle that marriage alone does not confer a right to equal share of matrimonial property. Dissatisfied, the Respondent/Appellant appealed the decision to the Court of Appeal and the question for determination was “whether the learned trial judge was right in law and in equity, under the facts of the circumstances, in settling only one of the several matrimonial properties on the Appellant, thereby leaving the rights of the parties to all other matrimonial properties unresolved?”. In essence, therefore, the Respondent/Appellant

⁹ *Aguolu v Aguolu* (ID/1899HD/2015)

¹⁰ CAP M7, LFN 2004

¹¹ *Aguolu v Aguolu* (2025) LPELR-80269 (CA)

claimed that on the basis of being married to the Petitioner/Respondent, she was entitled to an equal share of his properties, thereby raising issues regarding her entitlement to a share of property by virtue of marriage.

The Court of Appeal dismissed the appeal on the basis that the Appellant had no financial contribution or proof of it to show her entitlement to the properties. The *ratio decidendi* is that evidential burden lies on the claimant to prove the nature and extent of her contribution to the matrimonial property.¹² The Appellant had no proof to back up her claim. The court further adduced to Section 131 Evidence Act¹³ that whoever asserts the existence of facts must prove that such facts exist. Also, in the instance such as Section 72 MCA where the court is given discretionary power, such discretion must be guided with evidence adduced and exercised “judicially and judiciously”¹⁴

The Respondent/Appellant’s case reignites the contentious discourse on whether divorced

women are entitled to an equal share in matrimonial property by the mere fact that they are a spouse? Whether lack of proof of contribution entitles a spouse to matrimonial property? The subsequent section analyses this contentious issue.

and “marriage alone does not confer an automatic right to equal division of matrimonial property”

3.0 Analysis

The settlement of property between the parties, which was the second issue for determination in the *Aguolu’s* case,¹⁵ is generally considered one of the most challenging issues in matrimonial proceedings.¹⁶ As mentioned earlier, Section 72 Matrimonial Causes Act, which refers to the power of the court in proceedings with respect to the settlement of property, was applied in *Aguolu v Aguolu*.

Section 72 (1) Matrimonial Causes Act states that:

¹² *Aguolu v Aguolu* (2025) LPELR-80269 (CA)

¹³ Evidence Act 2011

¹⁴ *Menakaya v Menakaya* (2001) 16 NWLR (PT. 738) 203 (P.253, Paras. B-D)

¹⁵ *Aguolu v Aguolu* (2025) LPELR-80269 (CA)

¹⁶ *Akinbuwa v Akinbuwa* (1998) 7 NWLR (Pt.559) 661 @676-677 Para H-D; Dalling Samuel, *Regulating Prenuptial Agreements: Balancing Autonomy and Protection*, Durham theses, Durham University. Available at Durham E-Theses Online: <http://etheses.dur.ac.uk/7768/> accessed 13 June 2025

The court may, in proceedings under this Act, by order require the parties to the marriage, or either of them, to make, for the benefit of all or any of the parties to, and the children of the marriage, such a settlement of property to which the parties are, or either of them is, entitled (whether in possession or reversion) as the court considers just and equitable in the circumstances of the case.

The provision requires that the court should make a just and equitable order as regards the parties to a marriage or either of them, for the benefit of all or any of the parties and the children of the marriage, such a settlement as to their entitlement. This provision gives a wide discretion to the court to determine what is just and equitable, relying on the facts alleged by the parties. As such, this provision is vague and there are no strict guidelines for the court to determine what is just and equitable.¹⁷ However, in determining what is just and equitable, the lead judge in *Aguolu v Aguolu* relied on three (3) main principles as follows:

- f. That the property is a matrimonial property
- g. Contribution to the acquisition of the matrimonial property
- h. That it is fair, just and equitable to settle the properties

Matrimonial Property: There is no law that explicitly defines what a matrimonial property is or what constitutes it, but it has been inferred or regarded as property that is acquired, whether jointly or individually, during the subsistence of the marriage.¹⁸ According to Nwogugu, “the property to be settled must be owned by one or both parties”.¹⁹ That is, where a property is owned by either of the parties separately or jointly, then it would be regarded as matrimonial property. What seems to be important, according to this definition, is that it was acquired while both parties were legally married. This interpretation is inadequate in that it appropriates property that is owned individually and cannot be regarded as fair or equitable. In essence, to determine what is just and equitable, the courts are often focused on the time of acquisition of the property, which spans from the commencement and subsistence (length) of the marriage. In

¹⁷ *Onovo v MBA* (2014) 14 NWLR (Pt. 1427) 391 (p. 437, Paras G-H)

¹⁸ *Aguolu v Aguolu* (ID/1899HD/2015)

¹⁹ Nwogugu E. I, *Family Law in Nigeria*, (Heinemann Educational Books Nigeria Plc 2001) 259.

Aguolu's case, it was established by both parties that the properties are matrimonial properties merely because they were acquired during the subsistence of the marriage. Most considerations of what determines a matrimonial property have often tilted towards a proof of ownership or title document.²⁰ Thus, where a property is registered in one of the spouses' names, he is considered the sole owner. Where it is titled in both spouses' names, it is joint property and can be regarded as matrimonial property to be shared. This narrow, ownership-centred approach, where the mere timing of acquisition during the marriage and the name on the title determine whether property is matrimonial, fails to account for the realities of spousal contribution and the equitable considerations that should guide property division. By reducing matrimonial property to a question of legal title, the courts risk perpetuating outcomes that are formally correct yet substantively unjust.

Although, there is no restriction as to the type of property. Property is basically categorised into two, i.e., real property (land and everything attached to the earth, e.g., buildings, etc.) and personal property (movable items).²¹ Thus, from most court decisions, the settlement of property has been that of real property.²² Clearly, in *Aguolu v Aguolu*, the properties in contention were landed properties. A further limitation in the current judicial approach is the implicit bias toward real property in matrimonial property settlements. While the law imposes no restriction on the type of property that may be classified as matrimonial, court decisions have often focused on land and other immovable assets. This narrow approach risks overlooking valuable personal property such as vehicles, investments, business interests, and high-value movable assets that may constitute a significant part of the couple's joint wealth. In *Aguolu v Aguolu*, for example, the dispute revolved entirely around landed properties, leaving unexamined the broader spectrum of assets that could fairly fall within the matrimonial property pool. By framing matrimonial property disputes predominantly in terms of real estate, the courts inadvertently reinforce a limited view of spousal entitlements and potentially exclude assets that could ensure a more equitable distribution.

²⁰ Chinelo Immaculata Jane Ugwu 'Appraisal of the Concept of Matrimonial Property under Nigerian Law' (2020-2021) 16 *The Nigerian Juridical Review*, pp 143–154. Also, the decision of the court in *Adaku Amadi v Edward Nwosu* (1992) LPELR-442 (SC); (1992) 6 SCNJ59.

²¹ Section 2 Property and Conveyancing Law 1958; See also, Ibekwe C.S, *An Outline of Property Law and Essential Land Reforms in Nigeria*, (2018) 5 (2) UNIZIK Journal of Commercial and Property Law 14.

²² *Essien v Essien* (2008) LPELR-4049(CA); *Oghoyone v Oghoyone* (2010) LPELR-4689 (CA); *Adaku Amadi v Edward Nwosu* (1992) LPELR-442 (SC); (1992) 6 SCNJ59.

Contribution to Acquisition of the Matrimonial Property: The involvement and donation of the parties is another major factor in determining the settlement of matrimonial property. The involvement of the parties relates to the acquisition, enhancement, or maintenance of the property.²³ While Section 72 is not explicit on the nature of the contribution, the courts have interpreted it to mean ‘financial’ contribution. In *Essien v Essien*²⁴, the Supreme Court upheld the decision of the lower court on the fact that property acquired during marriage belongs to the spouse in whose name it is registered. The constant argument before the court is that in considering what is just and equitable, both parties must have contributed financially to the acquisition of the property. Also, in *Dahiru v Dahiru*²⁵, the court exercised its discretion by considering the financial contributions of both parties to determine the property settlement. In *Oghoyone v Oghoyone*²⁶, the Court of Appeal took a different turn from *Essien*’s case and *Dahiru*’s case, in which it recognised indirect contributions, such as homemaking, as a basis for awarding a share of matrimonial property. This decision, with due respect, is an imitation of Western decisions, for instance, the decision in *White v. White*,²⁷ which established the principle of equal division of matrimonial assets regardless of the nature of contributions. One can argue that, of course, non-financial contributions, such as homemaking, emotional support, and child rearing, are responsibilities that can be taken up by both parties and even by the party who owns the matrimonial property.

While the recognition of non-financial contributions such as homemaking, emotional support, and child-rearing may appear equitable, it risks conflating marital roles with proprietary rights. These are responsibilities that can be undertaken by either spouse, including the very party who solely financed the acquisition of the property. The wholesale importation of Western ideas, as seen in *Oghoyone v Oghoyone*’s imitation of *White v White*, fails to reflect Nigeria’s socio-economic realities, where property ownership remains predominantly the result of direct and quantifiable financial investment. To equate intangible, non-monetary involvement with substantive ownership is to water down the very notion of equity, replacing contribution-based

²³ Ajayi, M. A. and Olotuah, A. O., ‘Violation of Women's Property Rights within the Family.’ (2005) 19(66) *Agenda* 58.

²⁴ (2009) 9 NWLR (Pt. 1146) 306.

²⁵ (2008) 3 NWLR (Pt. 1075) 36.

²⁶ (2010) LPELR-4689(CA).

²⁷ [2001] 1 AC 596

entitlement with a blanket presumption of equal division. Such an approach is arguably against the principle of fairness and risks rewarding non-financial contributors and penalising the spouse whose tangible resources made the acquisition possible.

Women are also protected by the laws. First is the right of women to acquire property, which is enshrined in the principle of equality guaranteed in the Constitution of the Federal Republic of Nigeria, which further prohibits discrimination on the grounds of gender.²⁸ Another long-standing development in the realm of women's property rights is the Married Women's Property Act (MWPA)²⁹, which was received into Nigerian law and granted married women the right to acquire, hold, and dispose of property.³⁰ There is also an increasing number of women who are educated and highly skilled,³¹ earning as much as their male counterparts. According to the Nigerian Bureau of Statistics, the labour force participation rate of females in 2024 is 77.1 per cent with a margin of 0.4 per cent compared to males.³² Additionally, the employment-to-population ratio is 72.3 per cent for females.³³ Likewise, the World Bank reports that the percentage share of women out of the labour force due to care responsibilities is 26 percent, and the female share of employment in senior and middle management is 65.8 percent.³⁴ This shows that women, arguably, now have relatively similar opportunities as their male counterparts in the economic sphere and, as such, can be gainfully employed and acquire properties too.

The principle of fairness, justice, and equity: Another principle is that the court must be convinced that it is just and equitable to share the property. To determine what is just and fair, the courts would have to rely on the facts before them. Thus, the party seeking the claim must place before the court material facts adequate for the court to exercise its discretion. The onus of proof is on the Appellant, who is alleging an entitlement to the property. Also, matrimonial causes are

²⁸ Section 42 of the Constitution of the Federal Republic of Nigeria, 1999, as amended.

²⁹ 1882

³⁰ Section 1, 2, Married Women's Property Act 1882

³¹ Sagay I, *Nigerian Family Law: Principles, Cases, Statutes & Commentaries* (Malthouse Press, Lagos 1999) 458.

³² The working age population of those employed and seeking employment and constitutes the labour force. Nigeria Labour Force Statistics Report Q1 2024 in conjunction with The World Bank and International Labour Organisation https://www.nigerianstat.gov.ng/pdfuploads/NLFS_Q1_2024_Report.pdf accessed 12 July 2025.

³³ Nigeria Labour Force Statistics Report Q1 2024, page 8.

³⁴ As at 2023. World Bank Group, Gender Data Portal (Gender Landscape) <https://documents1.worldbank.org/curated/en/099210007022221373/pdf/IDU0eb03f34c0b98b04dbf0a2670d6c566023098.pdf> accessed 12 July 2025.

civil suits, and proof is on a balance of probabilities to the reasonable doubt of the court.³⁵ The Appellant in *Aguolu v Aguolu* did not prove before the court substantial facts to have her claim granted.

One subject for debate was whether sufficient proof of matrimonial fault/blame in accordance with the facts for dissolution of marriage in section 15 (2) Matrimonial Causes Act entitles a party to a share of the matrimonial property? The Appellant sufficiently proved and established evidence for dissolution of the marriage, but failed to establish and prove her contribution to the matrimonial property, which is the main condition. Thus, the basis for establishing a claim to the property is not the same as that for dissolution of marriage.

Another premise is whether it is just and equitable to consider the property of one party, the Respondent (husband), and not for both parties, irrespective of who has more, so far it falls within the whims of matrimonial property. In *Aguolu v Aguolu*, there was no mention as to the property owned by the Appellant (wife) and no consideration as to whether it should be divided. Flowing from the above, and in determining what is just and equitable, it cannot be considered just and fair to share the property of one party and not of both.

From a deeper reflection of the provisions of the Matrimonial Causes Act, it might seem that the law caters to the needs of parties at divorce, and that as a result, the sharing of property might not be fair. The provisions for financial relief are stipulated in Section 70 Matrimonial Causes Act.³⁶ Section 70 Matrimonial Causes Act empowers the court to make financial orders in respect of the maintenance of a party to the marriage, and that includes children of the marriage. In making this order, the courts are enjoined to consider the means, earning capacity, conduct of the parties, and other relevant circumstances.³⁷ Sections 70 and 72 Matrimonial Causes Act are not gender specific, i.e., it does not apply only to women in the marriage. As such, the husband can also request maintenance according to section 70 Matrimonial Causes Act or request a share of the wife's property. Conversely, section 70 Matrimonial Causes Act is put in place for the financially disadvantaged party and children of the marriage, which was also implemented for the wife and

³⁵ Section 134 Nigeria Evidence Act 2011. See also, Sagay I, *Nigerian Family Law: Principles, Cases, Statutes & Commentaries* (Malthouse Press, Lagos 1999) 637.

³⁶ Sagay I, *Nigerian Family Law: Principles, Cases, Statutes & Commentaries* (Malthouse Press, Lagos 1999) 457.

³⁷ See also *Nanna v Nanna* (2004) 3 NWLR (Pt.966) 10

children in *Aguolu v Aguolu*. In that case, there is no need to explore the provision of section 72 Matrimonial Causes Act.

However, it is safe to say that the courts in Nigeria do not consider marriage as a form of economic partnership, with the need to establish contribution to the property. Also, maintenance is determined on a need basis and not entitlement-based. The essence of this is that a party who has no financial contribution to the property does not lay a claim to it, thereby benefiting unjustly, which defeats the purpose of what is just and equitable.

4.0 Conclusion

The judgment provides an insight into how the courts decide the settlement of property between divorced parties. This decision replicates the decision made in previous cases in which the courts are of the opinion that where there is no evidence to substantiate the financial contribution of a spouse to the matrimonial property, then they are not entitled to a share. Decisions of past cases might be largely reliant on the fact that women were disadvantaged and at a low in terms of education, visibility, and representation. Also, on the presumption that it is the man's duty to maintain and cater for the wife and children, contrary to the Matrimonial Causes Act provision, whose maintenance and property settlement provisions are not specific to the man alone. In addition, there has been substantial development of the economic status of females, an increase in academic qualification, and employment even at the top management level, indicating that they are on the same horizon as their male counterparts and can acquire properties. This is equally backed up by the Married Women's Property Act, which grants married women the right to purchase property.

In conclusion, *Aguolu v Aguolu* reaffirms a long-standing judicial position in Nigeria that entitlement to matrimonial property must be anchored on the spouses' established financial contribution. This is a necessary safeguard against outcomes that unjustly transfer property from contributing to non-contributing spouses. While arguments for recognising non-financial contributions may resonate well in Western jurisdictions, Nigeria's socio-economic realities, coupled with the constitutional and statutory equality provisions that already empower women to own and acquire property, render such an approach unfeasible. This review recommends that Section 72, Matrimonial Causes Act should therefore be applied with a clear evidentiary

threshold for contribution: objective, measurable, and resistant to sentimental expansion. Only in this way can the principle of “just and equitable” settlement remain true to its purpose and avoid rewarding those who, in property terms, have not sown.