



**SWM v CGG (Civil Suit E070 of 2023)
[2024] KEHC 11787 (KLR) (Family) (26 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 11787 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
CIVIL SUIT E070 OF 2023
PM NYAUNDI, J
JULY 26, 2024**

BETWEEN

SWM APPLICANT

AND

CGG RESPONDENT

RULING

1. The Applicant herein, Susan Wairimu Muriuki took out Originating Summons dated 5th September 2023 against the Respondent seeking the following orders;
 1. An order do issue declaring that the Applicant is entitled to 50% or such other higher proportion as this court may deem fit to the following properties; Land Parcel Number Mwana Wikio Coop Society Ltd Ballot No.XXXX(Mitubiri/Nanga/Block XXXX which has the matrimonial home together with plots that have 44 rental units that fetch an income of Kshs. 1,500 per month, Mwana Wikio Co-op Society Ltd Ballot No.XXXX(Mitubiri/Nanga/Block XXXX), Mwana Wikio Coop Society Ltd Ballot No.XXXX, Kiambu/Munyu/XXXX, Kisii/Makongeni, Motor Vehicles Resgistration Number KBD XXXX, KBS XXXX and KCK XXXX.
 2. Costs of this application be provided for.
2. The Respondent opposed the summons by filing a Preliminary of Objection dated 7th November 2023 on the following grounds;
 1. Thatthe Originating Summons dated 5th September 2023 is premature, incompetent, non-starter and untenable as the cause of action originates from Murang’a County.



2. That this Honourable court lacks the jurisdiction to determine this dispute and or suit as the same offends the provisions of *Civil Procedure Rules 2010* as the suit properties are situated in Murang'a.
 3. That the subject suit as laid is incurably defective, premature, unsustainable in law, and is purely an academic and therefore this court lacks statutory and contractual jurisdiction, it is an abuse of the court process and should be struck out ex debito justitiae .
 4. That the entire suit as laid down is misconceived, bad in law, unknown in law, incurably defective and amounts to an abuse of the court process craving to be struck out ex debito justitiae.
3. The Preliminary Objection was disposed of by way of written submissions. The Applicant filed written submissions dated 18th May 2024 whilst the Respondent filed submissions dated 15th May 2024.

Analysis And Determination.

4. I have read the Preliminary Objection and the Written Submissions filed by the parties herein. The primary issue for determination is whether the Preliminary Objection dated 7th November 2023 has merit.
5. The Supreme Court in *Hassan Ali Joho & Another v Suleiman Said Shabbal & 2 Others* cited the leading decision on Preliminary Objections, *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd.* [1969] EA 696, where the Court held as follows:

“a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration... a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion”.

6. The Supreme Court in *Independent Electoral & Boundaries Commission v Jane Cheperenger & 2 Others* [2015] eKLR made the following observation as relates to Preliminary Objections:

“... The true preliminary objection serves two purposes of merit: firstly, it serves as a shield for the originator of the objection—against profligate deployment of time and other resources. And secondly, it serves the public cause, of sparing scarce judicial time, so it may be committed only to deserving cases of dispute settlement. It is distinctly improper for a party to resort to the preliminary objection as a sword, for winning a case otherwise destined to be resolved judicially, and on the merits.”

7. The Preliminary Objection challenges this court's jurisdiction to hear and determine the Originating Summons on account of territorial jurisdiction. Jurisdiction is the authority or power vested in the court to hear and determine a matter before it. In the celebrated case of *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] eKLR, held:

‘Jurisdiction is everything. A court has no power to make one more step where a court has no jurisdiction that could be no basis for a continuation of proceedings pending other evidence. A court



of law down its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.’

8. Article 165(3) (a) of the Constitution of Kenya grants the High Court unlimited original jurisdiction in both civil and criminal cases except those that are specifically excluded by the Constitution .
9. The jurisdiction of this court to entertain disputes concerning matrimonial property is found in the Matrimonial Property Act. The jurisdiction covers all matrimonial property whether moveable or immovable. Matrimonial property is defined at section 6 of the Matrimonial Property Act as follows:
 - “(1) For the purposes of this Act, matrimonial property means—
 - (a) the matrimonial home or homes;
 - (b) household goods and effects in the matrimonial home or homes;
or
 - (c) any other immovable and movable property jointly owned and acquired during the subsistence of the marriage.
 - (2) Despite subsection (1), trust property, including property held in trust under customary law, does not form part of matrimonial property.”
10. This court therefore has jurisdiction to determine the Originating Summons filed by the Applicant which involves distribution of matrimonial property.
11. As regards the issue of territorial jurisdiction, I find that the provision of Section 13 of the Civil Procedure Act, cannot oust the jurisdiction of this court as vested by Article 165 (3)(a) of the Constitution.
12. The Preliminary objection is hereby dismissed. The Originating Summons shall proceed for hearing. It is so ordered
13. The Respondent shall meet the costs of the Application

SIGNED, DATED AND DELIVERED VIRTUALLY IN NAIROBI ON 26TH DAY OF JULY, 2024.

P M NYAUNDI

HIGH COURT JUDGE

In the presence of:

Fardosa Court Assistant

