



**CGM v FMM (Originating Summons 1 of 2017)
[2023] KEHC 122 (KLR) (19 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 122 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
ORIGINATING SUMMONS 1 OF 2017
LW GITARI, J
JANUARY 19, 2023**

BETWEEN

CGM PLAINTIFF

AND

FMM DEFENDANT

RULING

1. This ruling is coming up for determination of whether the Magistrate’s Court has jurisdiction to hear and determine the issues raised by the parties herein.
2. The proceedings herein were instituted vide an Originating Summons dated April 22, 2016 in which the plaintiff sought for the distribution of properties which she claims to be matrimonial property.
3. Section 17 of the *Matrimonial Property Act* (No. 49 of 2013) provides for the procedure that is to be followed in determining rights of parties with respect to matrimonial property. The said Section provides as follows:

- “(1) A person may apply to a court for a declaration of rights to any property that is contested between that person and a spouse or a former spouse of the person.
- (2) An application under subsection (1)—
- (a) shall be made in accordance with such procedure as may be prescribed;
 - (b) may be made as part of a petition in a matrimonial cause; and
 - (c) may be made notwithstanding that a petition has not been filed under any law relating to matrimonial causes.”



This section is under part V of the Act which deals with jurisdiction. It is noted that the Act does not define the 'court'. It is my view that the intention of the parliament is that a party may apply to a court which (1) the petition in a matrimonial cause has been filed (2) The court with jurisdiction i.e depending on the monetary value of the properties (3) whether or not a matrimonial cause has been filed.

4. The above provision connotes that concurrent jurisdiction has been given to the various courts to hear disputes relating to matrimonial property. in this regard, this court has original and unlimited jurisdiction in civil matters by virtue of the provision of article 165(3) of the Constitution. The Court's jurisdiction therefore includes jurisdiction over matters relating to matrimonial property.
5. Equally, the Magistrate's Courts have jurisdiction to hear matrimonial causes arising under Marriage Act of 2014. The Act defines court to mean a Resident Magistrate's Court under the Chief Magistrate's Court Act established under section 3 of the Act. Section 7 provides for the Civil Jurisdiction of a Magistrate's Court. The highest jurisdiction is that of a Magistrate which is twenty million, Senior Principal Magistrate is fifteen million, Principal Magistrate, ten million, Senior Resident Magistrate seven million and five million for a Resident Magistrate. A magistrate who is seized of a matrimonial cause will have jurisdiction to determine a dispute under the Matrimonial Property Act based on his/her Monetary Civil Jurisdiction.
6. That said, it is trite that a suit ought to be instituted in a court of the lowest grade that is competent to try it. This is provided in section 11 of the Civil Procedure Act that states that:

“Every suit shall be instituted in the court of the lowest grade competent to try it, except that where there are more subordinate courts than one with jurisdiction in the same district competent to try it, a suit may, if the party instituting the suit or his advocate certifies that he believes that a point of law is involved or that any other good and sufficient reason exists, be instituted in any one of such subordinate courts:

Provided that—

- (i) if a suit is instituted in a court other than a court of the lowest grade competent to try it, the magistrate holding such court shall return the plaint for presentation in the court of the lowest grade competent to try it if in his opinion there is no point of law involved or no other good and sufficient reason for instituting the suit in his court; and
 - (ii) nothing in this section shall limit or affect the power of the High Court to direct the distribution of business where there is more than one subordinate court in the same district.”
7. In this case, the Magistrate's court is the lowest court of competent jurisdiction to handle this matter. Mr. Mwanzia, counsel on record for the plaintiff, urged this court to hear and determine the matter. He however did not give any basis for his position.
 8. This court is guided by the overriding objective provided under sections 1A and 1B of the Civil Procedure Act that is meant for the attainment of justice. The said Sections are expressed in the following terms:

1A

- (1) The overriding objective of this Act and the rules made hereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act.



- (2) The court shall, in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective specified in subsection (1).
- (3) A party to civil proceedings or an advocate for such a party is under a duty to assist the court to further the overriding objective of the Act and, to that effect, to participate in the processes of the court and to comply with the directions and orders of the court.”

1B.

- (1) For the purpose of furthering the overriding objective specified in section 1A, the court shall handle all matters presented before it for the purpose of attaining the following aims—
 - (a) a) the just determination of the proceedings;
 - (b) b) the efficient disposal of the business of the court;
 - (c) c) the efficient use of the available judicial and administrative resources;
 - (d) d) the timely disposal of the proceedings, and all other proceedings in the court, at a cost affordable by the respective parties; and
 - (e) e) the use of suitable technology.”

9. In order to give effect to the overriding objective and its principal aims in the present case, this court is under a statutory obligation to ensure efficient disposal of the business of the court, efficient use of the available judicial and administrative resources and the timely disposal of the proceedings, and all other proceedings in the Court.

10. Section 18 of the *Civil Procedure Act* bestows on this Court the power to transfer a civil suit pending before it to a subordinate court with competent jurisdiction. Section 18(1)(a) of the *Civil Procedure Act* stipulate thus:

- “(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court may at any stage—
 - a. transfer any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same;”

11. From the foregoing, and that considering the nature of the reliefs sought in this case the fact that the sub-ordinate court has jurisdiction this court ought to transfer this matter to the Magistrate’s court suo moto as the same will ensure efficient disposal of the business of the court and efficient use of available judicial and administrative resources. In the circumstances and in the interest of justice it is my view that the suit should be transferred to the Magistrate’s Court.

In Conclusion

12 The sub-ordinate courts have jurisdiction to handle Matrimonial Property Disputes. This matter is therefore transferred to the sub-ordinate court for hearing and determination. The Chief Magistrate will allocate the matter to the Magistrate with jurisdiction including herself.

Dated, signed and delivered at Chuka this 19th day of January 2023.



L.W. GITARI

JUDGE

19/1/2023

Ruling has been read out in open court.

L.W. GITARI

JUDGE

19/1/2023

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