



**HNN v DNK (Environment & Land Case 19 of 2022)
[2023] KEELC 16740 (KLR) (17 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16740 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 19 OF 2022**

**BM EBOSO, J
MARCH 17, 2023**

BETWEEN

HNN PLAINTIFF

AND

DNK DEFENDANT

RULING

1. HNN initiated this suit through a plaint dated 7/2/2022. Her case is that she and the defendant got married on 7/12/1991 under the African Christian Marriage and Divorce Act. They have lived as husband and wife since then. During the subsistence of their marriage, they jointly contributed towards the purchase of land parcel number Sigona/1235 (the suit property). They purchased the suit property through a sale agreement dated 14/12/2002. Subsequently, the suit property was registered in the name of DNK (the defendant). According to the plaintiff, the purchase price was Kshs.650,000, out of which she contributed Kshs. 500,000 and the balance Kshs (150,000) was contributed by the defendant. It is her case that she developed the suit property. In particular, she constructed residential houses on the land.
2. The plaintiff contends that they got estranged in 2011. It is her case that the defendant has threatened to dispose the suit property. Consequently, she seeks a declaration that the suit property is a matrimonial property; that she has acquired spousal rights over the suit property; and that those rights should be noted in the relevant land register. Secondly, she seeks an order inhibiting registration of any dealings in the land register without her express consent.
3. The defendant, DNK, filed a statement of defence dated 14/7/2022. He denies the allegation that they were living together as husband and wife at the time of acquisition of the suit property. He contends that he acquired the suit property solely. He denies the allegation that he is in the process of disposing the suit property. It is his case that there is no reasonable cause to warrant any of the prayers sought in the plaint.



4. On 2/2/2023, the court directed parties to address it on the question of jurisdiction of this court to adjudicate this dispute. Submitting on the question of jurisdiction, Mr Wachira, counsel for the plaintiff, argued that the plaintiff and the defendant were estranged and lived separately. Counsel added that there were no pending divorce proceedings and there was no subsisting matrimonial cause between them. It was counsel's submission that the suit property was acquired during the subsistence of the marriage. Counsel argued that the prayers sought in the plaint were multifaceted and the relief of inhibition fell within the jurisdiction of this Court. It was his view that this court had jurisdiction to adjudicate the dispute.
5. Mr Kinuthia, counsel for the defendant, submitted that the reliefs sought in the suit could only be issued under section 17 of the *Matrimonial Property Act* and the court vested with jurisdiction to adjudicate the dispute was the Family Court. Counsel argued that this court lacked jurisdiction to adjudicate the dispute in this suit.
6. In his rejoinder, Mr Wachira, counsel for the plaintiff, argued that the dispute in this suit was about declaration of rights over the suit property and that it was not about distribution of matrimonial property.
7. The court has considered the rival submissions of the parties. The court has also considered the relevant legal frameworks and jurisprudence. The single question falling for determination in this ruling is whether this court is the proper court vested with jurisdiction to adjudicate the dominant issue in this suit.
8. The approach which our courts take when disposing questions relating to jurisdiction is well settled. In the locus classicus case of *Owners of Motor Vessel 'Lilian S' v Caltex Oil (Kenya) Ltd* (1989) 1 KLR, Nyarangi JA outlined the guiding principle on disposal of jurisdictional questions as follows:

“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it at the moment it holds the opinion that it is without Jurisdiction.”
9. In *Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others* (2012) eKLR the Supreme Court of Kenya outlined the following jurisprudential principle on the source and scope of jurisdiction of a court:

“A court's jurisdiction flows from either *the Constitution* or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by *the constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.”
10. The jurisdiction of the Environment and Land Court of Kenya is spelt out in article 162(2)(b) of *the Constitution* and section 13 of the *Environment and Land Court Act*. Suffice it to state that, this court is vested with jurisdiction to adjudicate disputes relating to the environment and the use, occupation of, and title to land.
11. There is common ground that the plaintiff and the defendant are husband and wife. They are, however, estranged. Neither of them has instituted divorce proceedings. In her pleadings and supporting affidavit, the plaintiff contends that the suit property is matrimonial property. Among the reliefs she seeks is a declaration to that effect. On his part, the defendant denies the fact that they were living together as husband and wife at the time of acquisition of the suit property. He further denies the fact that the suit property is matrimonial property.



12. Does the Environment and Land Court have jurisdiction to deal with the dispute? It is apparent that the dispute in this suit revolves around the rights of the estranged couple over the suit property. The plaintiff has come to court asserting that the suit property is both a matrimonial property and a matrimonial home and that the defendant can only deal with it as such.
13. Section 17 of the *Matrimonial Property Act* 2013 contains the following provisions on how a spouse or a former spouse is supposed to seek redress relating to a right over what he or she considers to be matrimonial property:
1. “17. Action for declaration of rights to property 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.
14. Until the year 2022, there were uncertainties about the court that was contemplated to exercise jurisdiction under section 17 of the *Matrimonial Property Act*. To clear the uncertainties, the *Matrimonial Property Rules* 2022 were legislated and operationalized. Rules 6 and 7(1) of the Matrimonial Property Rules 2022 contain the following elaborate framework on the court vested with jurisdiction and the cause in which a claim relating to matrimonial property is to be ventilated.

“

“6.

- (1) An application to enforce a claim relating to matrimonial property may be made in any proceedings under the Act —
 - (a) to the High Court in any case where the value of the matrimonial property which is the subject matter of the claim exceeds the pecuniary jurisdiction of a magistrate's court; or
 - (b) to a magistrate's court having civil jurisdiction to adjudicate matters within the court's pecuniary jurisdiction.
- (2) Where the spouses profess the Muslim faith, the court to which an application is made may, on the request of the parties, be guided by Muslim law.

7(1) Where, under section 17, a person seeks a declaration of any right to property that is contested between that person and a spouse or a former spouse in a petition made to a court for dissolution of the marriage under the *Marriage Act*, 2014 (No. 4 of 2014), the application may be made as part of the relief sought in the matrimonial cause in accordance with the Matrimonial Proceedings Rules, 2020.”



15. It is therefore clear from the above framework that the court vested with jurisdiction to adjudicate the dispute in this suit is the High Court and the Magistrate Courts that may be seized of the necessary pecuniary jurisdiction. The Environment and Land Court is not the court contemplated under section 17 of the Act.
16. Consequently, in line with the guiding principle outlined by the Supreme Court of *Kenya in Benson Ambuti Atega & 2 others v Kibos Distillers Limited & 5 others* (2020 eKLR, I order that this suit be transferred to the High Court of Kenya at Kiambu for adjudication within the framework of section 17 of the *Matrimonial Property Act* as read together with rules 6 and 7 of the *Matrimonial Property Rules* 2022. The High Court will be at liberty to thereafter issue necessary directions and orders for the purpose of aligning the cause with the procedural rules of the court.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 17TH DAY OF MARCH 2023

B M EBOSO

JUDGE

In the Presence of: -

Mr. Kinuthia for the Defendant

No appearance for the Plaintiff

Court Assistant: Ms Osodo

THIKA ELC CASE NO 19 OF 2022 (RULING) Page 3

