



**JJC v MKC & 2 others (Environment & Land Case E013 of 2021)  
[2023] KEELC 17102 (KLR) (27 April 2023) (Ruling)**

Neutral citation: [2023] KEELC 17102 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE E013 OF 2021**

**EO OBAGA, J  
APRIL 27, 2023**

**BETWEEN**

**JJC ..... PLAINTIFF**

**AND**

**MKC ..... 1<sup>ST</sup> DEFENDANT**

**SAMUEL KIMAIYO CHESIRE ..... 2<sup>ND</sup> DEFENDANT**

**MARY JEPKOGEI CHEMAOI ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. JJC is the wife to MKC who is the 1<sup>st</sup> defendant. MKC together with three others purchased one acre from LR No Kiplombe/Kiplombe block 10 (Growel) 128. The four partners agreed to subdivide the one acre equally amongst themselves.
2. According to the mutation, MKC’s portion became LR No (particulars withheld) (suit property). MKC wanted to sell the suit property to one Dorcas Chelel but the sale did not go through despite Dorcas having paid a deposit of Kshs 7,000/= to MCK. MCK later sold the suit property to the 3<sup>rd</sup> defendant. This is what prompted JJC to file this originating summons in which she sought the following issues to be determined: -
  1. Whether the MCK by virtue of being the owner of provisional plot No (particulars withheld) curved from that property known as Kiplombe/Kiplombe block 10 (Growel)/128 does hold the property in trust of JJC.
  2. Whether JJC has an overriding interest on the suit property by virtue of being the legal wife of MCK and a resident of the suit property.
  3. Whether or not the 1<sup>st</sup> defendant can validly deal or transact with the suit property exclusively with the 2<sup>nd</sup> and 3<sup>rd</sup> defendant with no regard to JJC and family.



4. Whether the plaintiff is entitled to costs.
3. JJC further claimed the following reliefs: -
  - a. That a permanent injunction be issued restraining the MCK by himself or through agents from disposing or leasing or dealing with provisional plot No (particulars withheld) curved from that property known as Kiplombe/Kiplombe block 10 (Growel)/128 without involving JJC herein.
  - b. A declaration that JJC is an equal partner with overriding interests on that property known as with provisional plot No (particulars withheld) curved from that property known as Kiplombe/Kiplombe block 10 (Growel)/128.
  - c. A declaration that the sale agreement dated December 2, 2006 between the MCK and 3<sup>rd</sup> defendant herein is null and void *ab initio*.
  - d. That JJC is entitled to costs of this suit.
  - e. Any other reliefs deem fit and just for this court to grant.
4. The originating summons was expressed to be brought under article 45(3) of the Constitution and section 93(1) of the Land Registration Act.
5. I must point out at the outset that the entire section 93 of the Land Registration Act was deleted through the Land Laws (Amendment) Act, 2016 and replaced with a new section which states as follows: -

“Subject to any written law to the contrary, if a spouse obtains an interest in land during the subsistence of a marriage for the co-ownership and use of both spouses or all spouses, such property shall be deemed to be matrimonial property and shall be dealt with under the Matrimonial Property Act.”
6. Article 45(3) of the Constitution states as follows: -

“Parties to a marriage are entitled to equal rights at the time of the marriage, during the marriage and at the dissolution of the marriage”
7. Both JJC and MKC are still married. I therefore, have to deal with the issue as to whether I have jurisdiction to deal with matters under the Matrimonial Property Act. When the Matrimonial Property Act was enacted in 2013, there was no definition of court where any disputes as regards matrimonial property were to be filed.
8. For a long time, parties were filing matrimonial disputes both in the High Court and in the Environment & Land Court. The Environment and Land Court could always rule that it had no jurisdiction to deal with matrimonial disputes but the situation remained grey.
9. It was not until the Matrimonial Property Rules were put in place in July 2022 *vide* legal notice No 137 of July 22, 2022 when the court was defined to mean High Court and the Chief Magistrates’ Courts acting in their civil jurisdiction where the property involved does not exceed Kshs 20,000,000/=.
10. I therefore hold that I do not have jurisdiction to deal with this matter. As the case was filed in a court without jurisdiction, I proceed to dismiss the same with costs to the defendants.

It is so ordered.



**DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 27<sup>TH</sup> DAY OF APRIL, 2023.**

**E. O. OBAGA**

**JUDGE**

In the virtual presence of;

Mr. Kibii for Plaintiff

Mr. Tororei for 3<sup>rd</sup> Respondent and Ms. Masai for 2<sup>nd</sup> Respondent.

Court Assistant –Laban

**E. O. OBAGA**

**JUDGE**

**27<sup>th</sup> APRIL, 2023**

