



**AAD v MED (Matrimonial Cause E002 of 2020)
[2022] KEHC 10221 (KLR) (28 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 10221 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MIGORI
MATRIMONIAL CAUSE E002 OF 2020**

RPV WENDOH, J

JUNE 28, 2022

IN THE MATTER OF DIVISION OF MATRIMONIAL PROPERTY

AND

**IN THE MATTER OF ARTICLE 45 (3) OF THE
CONSTITUTION OF THE REPUBLIC OF KENYA**

AND

IN THE MATTER OF SECTION 16 (1) OF THE MATRIMONIAL PROPERTY ACT, 2013

AND

**IN THE MATTER OF SECTION 28 (1) AND 93
(2) OF THE LAND REGISTRATION ACT 2012**

BETWEEN

AAD APPLICANT

AND

MED RESPONDENT

RULING

- 1 This ruling is in respect to the Notice of Preliminary Objection (the “Objection”) dated 18/6/2021 filed by the respondent on the following grounds:-
 - a. The court lacks jurisdiction to deal with this case since Section 6 of the Matrimonial Act deals with marriages and spouses under the Kenya Marriages Act.
 - b. That the applicant is not a spouse or former spouse under the Kenyan Law since the marriage was not solemnized or dissolved in Kenya.



- c. That this court does not have jurisdiction since the judgment in the Superior Court of New Jersey, Chancery Family Part Middlesex County, USA has not been adopted as a judgement in Kenya under Sections 4, 5, and 6 of the [Foreign Judgement \(Reciprocal Enforcement\) Act](#) Chapter 43.
- d. That this application is frivolous, vexatious and an abuse of the court process herein.
2. The objection was canvassed by way of written submissions and both parties complied. I have certainly read and understood each parties' position.
3. A preliminary objection is one which raises a pure point of law which has been pleaded or which arises by clear implications out of pleadings and which when argued, may dispose of the suit. An example is the objection to the jurisdiction of the court or a plea of limitation of time. Nyarangi J in [Owners of the Motor Vessel "Lilian s" vs Caltex Oil \(K\) Ltd](#) (1989) KLR held;
- “Where the court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given... Jurisdiction is everything. Without it, a court has no power to make one more step. Where the 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 the moment it holds the opinion that it is without jurisdiction.”
4. In the instant case, the objection is premised on the jurisdiction of this court. The respondent's contention is that this court is divested of jurisdiction to hear and determine the instant cause on three grounds:-
- a) The parties in this cause are not covered under section 6 of the [Matrimonial Act](#).
- b) The applicant is not a spouse or former spouse under the Kenyan Law since the marriage was not solemnized or dissolved under the Kenyan Law.
- c) Failure to have the judgement of the Superior Court in New Jersey, Chancery Division Family Part, Middlesex County, USA adopted as a judgement in Kenya under the Foreign Judgement (Reciprocal Enforcement) Act.
5. The applicant's position is that there is no order or decree that she intends to have enforced in Kenya. Therefore, there is no need to have the judgement delivered in the foreign court adopted first in Kenya. In any event, Section 3 (3) (d) of the Foreign Judgement (Reciprocal Enforcement) Act disqualifies matrimonial cases from being adopted first.
6. The parties herein celebrated their marriage in New Jersey in the year 1994 and cohabitated as husband and wife until a divorce decree was issued on 20/4/2018.
7. On 17/12/2018 the applicant filed this Originating Summons seeking declarations that she is entitled to a share of the properties listed in the Originating Summons.
8. Section 9 of the [Civil Procedure Act](#) and Sections 3 and 13 of the [Foreign Judgments \(Reciprocal Enforcement\) Act](#) provides for recognition of foreign judgments. Section 3 (3) (d) of the [Foreign Judgments \(Reciprocal Enforcement\) Act](#) Cap 43 provides:-
- (3) This Act does not apply to a judgment or order-
- “(d) in a matrimonial cause or matter, or determining rights in property arising out of a matrimonial relationship, not being a



judgment referred to in paragraph (a) or (b) of subsection (1), whereby a sum of money is payable or item of movable property deliverable;”

9. Section 67 of the [Marriage Act](#) permits recognition of foreign marriages. The said section provides as follows:-

“Where a foreign court has granted a decree in matrimonial proceedings whether arising out of a marriage celebrated in Kenya or elsewhere, that decree shall be recognized in Kenya if:-

- (a) Either party is domiciled in the country where that court has jurisdiction or had been ordinarily a resident in Kenya for at least two years immediately preceding the institution of the proceedings
- (b) Being a divorce or annulment, divorce or separation, it is effective in the country of domicile of the parties or either of them.”

10. The above provision does not make it mandatory for recognition of foreign decrees on marriages under the [Foreign Judgments \(Reciprocal Enforcement\) Act](#) Cap 43. There is also no need to demonstrate reciprocity. The conditions which are required to be met are that either party was domiciled in the country where the decree or order was made and the foreign court had jurisdiction. Secondly, the decree or order should be effective in the country of domicile. There is no evidence on record that the Superior Court of New Jersey did not have jurisdiction.

11. It should also be noted that recognition of foreign judgement is not the same as registration. Section 61 (1) of the [Marriage Act](#), makes provision for registration of foreign annulments and dissolution of marriages as follows:-

“where a marriage celebrated in Kenya is annulled or dissolved by a decree of a foreign court, any party to the annulled or dissolved marriage may apply to the registrar to register the decree”. (emphasis)

12. Therefore, registration of annulments or decrees is not a preserve of the courts but it is a function of the Registrar of Marriages. In any event, it is not compulsory. The operative word is ‘may.’ Hence, whether or not the annulment or decree is registered in Kenya, as long as the provisions under Section 67 of the [Marriage Act](#) are met, the decree is recognizable in Kenya. I should proceed to add that matrimonial causes for dissolution of marriages are declaratory in nature which have no orders for enforcement unlike in commercial transactions.

13. Musyoka J in [MNM v PNM](#) [2016] eKLR held: -

The appellant sought to persuade the court that the decree of the Florida court ought not to be recognized in Kenya. The provisions of the Foreign Judgments (Reciprocal Enforcement) Act were cited in that regard. It was suggested that foreign judgments in matrimonial causes are not recognized in Kenya. That cannot be the correct position. The Foreign Judgments (Reciprocal Enforcement) Act only regulates registration of foreign judgments, and its effect is that such judgments in matrimonial causes are not registrable. That is not the same as saying that such judgments are not recognized. Registration is necessary under the Foreign Judgments (Reciprocal Enforcement) Act for enforcement purposes. A decree for dissolution of marriage is not for enforcement, and therefore there really is no need for it



to be registered under the Foreign Judgments (Reciprocal Enforcement) Act, for a divorce decree amounts to a mere declaration that a marriage has been dissolved.”

14. The matrimonial cause filed by the applicant is for division of matrimonial properties which were allegedly acquired during the subsistence of their marriage. The High Court is vested with jurisdiction to hear and determine matters in regard to division of matrimonial properties.
15. From the foregone, I find that the respondent’s Notice of Preliminary Objection dated 18/6/2021 is devoid of merit. The same is dismissed. Costs shall be to the applicant.

DATED, DELIVERED AND SINGED AT MIGORI THIS 28TH DAY OF JUNE 2022.

R. WENDOH

JUDGE

Ruling delivered in presence of;-

N/A for the Applicant

N/A for the Respondent

Nyauke - Court Assistant

