



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MERU**

**ELC NO 216 OF 2012**

**F K.....PLAINTIFF**

**VERSUS**

**J M I.....DEFENDANT**

**RULING**

1. The preliminary objection filed by defendant on 28.1.2015 raises the following grounds;

i. That this Honourable court lacks Jurisdiction to hear and determine the matter herein as plaintiff and defendant are in an unbroken coverture.

ii. That the suit lacks merits and should be dismissed with costs.

2. Way back on 24.2.2016 directions were given for the preliminary objection to be argued by way of written submissions. Defendant did file his submissions. Plaintiff did not.

3. It has been submitted by defendant that plaintiff is his second wife. He also avers that plaintiff is seeking the division of the land L.R No. [...] between plaintiff and defendant.

4. Defendant contends that the law governing the division of matrimonial property between spouses is the matrimonial property Act. Reference has been made to section 6 of the Act where it is stipulated that; ***“Subject to section 6 (3) ownership of matrimonial property vests in the spouses according to the contribution of either spouse towards its acquisition, and shall be divided between spouses if they divorce or their marriage otherwise dissolve”.***

5. In support of the argument defendant has cited the following cases;

i. P.W.M versus E.M (2014) eKLR where the court stated that; ***“Matrimonial property is not subject to division in life of the marriage between spouses”.***

ii. Peter Ndung’u Njenga versus Sophia Watiri Ndung’u (2000) eKLR where the court held that ***“The learned Judge had no jurisdiction to alienate suit lands between spouses during their life time or unbroken coverture and he ought to have dismissed the suit”.***

6. I find that in her summons dated 22.11.2012, plaintiff has admitted to having cohabited with defendant since 1979. She is asking the court to inter-alia determine the nature of rights gained by the plaintiff by virtue of her contribution though her labour or by other means to the productivity and upkeep in respect of land parcel No. [...].

7. I am in agreement with defence submissions that the court has no jurisdiction to determine this matter in view of the cited authorities and the law.

8. The suit herein is dismissed with costs to defendant.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 25<sup>th</sup> APRIL, 2018 IN THE PRESENCE OF:-**

**Court Assistant: Janet/Galgalo**

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**