



GDM v Consolidated Bank of Kenya & another (Environment & Land Case E001 of 2022) [2023] KEELC 21952 (KLR) (29 November 2023) (Ruling)

Neutral citation: [2023] KEELC 21952 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE E001 OF 2022
CK NZILI, J
NOVEMBER 29, 2023**

BETWEEN

GDM PLAINTIFF

AND

CONSOLIDATED BANK OF KENYA 1ST DEFENDANT

CMM 2ND DEFENDANT

RULING

1. When this matter came for main hearing on 28.9.2023, counsel appearing for the 2nd defendant told the court there was a pending Matrimonial Property Case No. 14 of 2019 (OS), before the High Court when they had applied for a stay of proceedings, pending hearing and determination of this suit. Mr. Kimaita learned counsel for the 1st respondent believes that the issues raised in this suit are similar to this suit going by the questions posed in the matrimonial property cause. He urged the court to call for the High Court file since no pleadings were attached.
2. Mrs. Machira learned counsel for the plaintiff took the view that the High Court suit had been stayed though she did not have the order. She submitted that the plaintiff had applied before the probate court on 7.10.2023, for a stay of that cause and reinstatement into one of the disputed properties.
3. Miss Kinyanjui learned counsel for the 2nd defendant believed that if the 1st defendant was raising a preliminary objection, he should file one so that directions could be given. Further, counsel said that although she was not on record in the matrimonial property case, she saw no problem proceeding with the suit. Mr. Kimaita advocate replied that the 1st defendant wanted a uniform decision to avoid forum shopping and save judicial time. Counsel submitted that such a question would fall under another court to avoid a conflicting decision on whether the property is matrimonial.



4. Miss Kinyanjui, upon perusal of the High Court, submitted that the determination of the issues therein would significantly impact this file. Counsel also confirmed that no stay existed in the High Court file.
5. Given the rival submissions, the court adjourned the suit and directed parties to file written submissions.
6. The plaintiff, by written submissions dated 5.10.2023, submitted that under Section 6 of the [Civil Procedure Act](#), the suit property before the court was and remained the matrimonial property; on the questions of the legality of charge held by the 1st defendant, the jurisdiction to determine the issue falls under the Environment and Land Court and not the High Court.
7. The plaintiff submitted that the issues before this court were distinct from those before the High Court. Reliance was applied on [RW vs JMN](#) (2022) eKLR, [BWM vs. JMC](#) (2018) eKLR, [MWK vs JKK & others](#) (2018) eKLR and [Kadzo Makutano vs Makutano Mwamboje](#) (2016) eKLR.
8. On the other hand, the 1st defendant, by written submissions dated 25.10.2023, submitted that the plaintiff and the 2nd defendant were parties to the Matrimonial Property Case No. 4 of 2019, where the court is invited among other issues, to determine the plaintiff's contribution in the acquisition of the properties set out in the summons schedule which properties are the same as those before this court. Further, the 1st defendant submitted the reliefs in the matrimonial property file because it replicates the reliefs sought herein. Therefore, the 1st defendant urged the court to find the suit sub-judice. Reliance was placed on [Kenya National Human Rights and Attorney General vs IEBC](#) (2020) eKLR.
9. It is a trite law that parties are bound by their pleadings. In the defense dated 4.2.2022, the 1st defendant pleaded that it was not privy to the suit between the 2nd defendant and the plaintiff herein. The issue of sub-judice was not pleaded. The 1st defendant raised the issue of the jurisdiction of this court to hear and determine the matter which the court ruled on 26.1.2022.
10. The 2nd defendant in this defense did not raise the issue of res judicata or a stay of the proceedings. Be that as it may, this court has been supplied with the originating summons dated 1.2.2019. In the High Court Matrimonial Property Cause No. 14 of 2019, there is a schedule of properties in the name of the 2nd defendant.
11. Stay of proceedings is a grave matter for its borders on the right of a party to expedition disposal of the case. There is no dispute that the plaintiff and the 2nd defendant are litigating the suit properties before two courts.
12. In this suit, the issue is whether or not spousal consent was sought and obtained before the 1st defendant charged the suit properties. The plaintiff's claim before this court is based on Section 92 (3) of the [Land Registration Act](#). Sub-judice under Section 6 of the [Civil Procedure Act](#) bars a court from proceeding over a pending matter before another court. This court's jurisdiction is created by Article 162 (2) of the [Constitution](#) and Section 13 (2) of the [Environment and Land Court Act](#).
13. The High Court, under Article 165 3 (a) of the [Constitution](#), the [Marriage Act](#) 2014, and the [Matrimonial Property Act](#) 2013, has the mandate to handle matrimonial property claims. The user and occupation of land falls under the Environment and Land Court. This court has no jurisdiction to divide matrimonial property upon dissolution of marriage under Section 6 of the [Matrimonial Property Act](#). The presumption that the suit properties form part of the plaintiff's and the 2nd defendant's matrimonial property falls under the High Court by dint of sections 2, 7, and 14 of the [Matrimonial Property Act](#) and Section 14 of the [Marriage Act](#). See [CWM vs JPM](#) (2017) eKLR.



14. In *RW vs. JMN* (2022) eKLR, the court observed that though the *Matrimonial Property Act* does not define the word court, the High Court, under its inherent jurisdiction, has traditionally handled such matters. The court said the claim would be severable court by the Environment and Land Court handling the claim of ownership since it goes to the title. The court cited with approval *BMW vs JMC* (2018) eKLR, that where the substratum of the dispute was ownership of the suit land, the Environment and Land Court had jurisdiction to handle the matter.
15. Having looked at the pleadings before this court, I am of the considered view that this is a proper suit for this court to stay until the determination of whether the suit properties were matrimonial properties or not, after which the court can determine the element of whether spousal consent was procured or not and whether the 1st defendant could dispose of the properties due to the outstanding loan regardless of the rights, if any, of the plaintiff.
16. The upshot is that I stay the suit for one year. The subsisting interim orders and directions shall continue as ordered. Parties are at liberty to apply for review if need be.

Orders accordingly.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 29TH DAY OF NOVEMBER 2023

In presence of

C.A Kananu/Mukami

No appearance

HON. CK NZILI

JUDGE

