



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

HIGH COURT CIVIL CASE NO. 77 OF 2017 (O.S)

L NAPPLICANT

VERSUS

J E N1ST RESPONDENT

C E2ND RESPONDENT

L E3RD RESPONDENT

RULING

1. The Respondent filed a Notice of Preliminary Objection dated 23/4/2018 to the Application dated 18/12/2018 on the following points;

(i) That the Application is incompetent, misconceived and otherwise an abuse of the Court process and does not lie in law or at all.

(ii) That the Respondent shall at first instance raise the issue whether the Application and the entire suit can be based on the matrimonial property act and or whether the said Act can be applied retrogressively.

(iii) That there are multiplicity of prayers and orders sought in one Application.

2. The Applicant in the Notice of Preliminary Objection submitted that the matrimonial Properties Act was signed into law on 31/12/2013 to commence on 1/1/2014 while the transaction being challenged took place in 2011 and 2012 and that the said Act cannot take place retrogressively.

3. Counsel for the Applicant opposed the Preliminary Objection on the grounds that a Preliminary objection should be based on pure points of law and further that the P.O is intended to waste the Court's time as nothing has been filed to show when the transaction took place.

4. He relied on the case of GIOUANINI PAPA Vs MARAFIKI PAMONJ HOMES COMPANY LIMITED [2007] eKLR where the court stated as follows:

“LAW JA in MUKHISA BISCUITS MANUFACTURING VS WESTEND DISTRIBUTORS LTD (1969) EA 69 took the view that a preliminary point of law consists of a point of law which has been pleaded, or which arises by clear implications out of pleadings and which if argued as a preliminary point may dispose of the suit”

5. I entirely agree with the Applicant in the Application dated 18.12.2017 that what the 1st Respondent is calling a Preliminary Objection will require to be ascertained through evidence.

6. The Preliminary objection is accordingly dismissed with costs to the Applicant. I further direct that the Application dated 18.12.2017 be canvassed by way of written submissions. The parties are directed as follows;

(i) The applicant to file and serve written submissions within 14 days of this date.

(ii) Thereafter, the Respondents to file and serve their written submissions within 14 days.

(iii) The case will be mentioned after 30 days of this date for highlights of the submissions and for a ruling date.

DELIVERED, SIGNED AND DATED IN OPEN COURT THIS 18TH DAY OF DECEMBER 2018

ASENATH ONGERI

JUDGE OF THE HIGH COURT OF KENYA, NAIROBI