

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

HIGH COURT CIVIL CASE NO. 39 OF 2012 (OS)

L W K.....APPLICANT

J K T.....RESPONDENT

RULING

1. The respondent raised a preliminary objection to the Originating Summons dated 20th June 2012 on the grounds that when the Originating Summons was filed on 22nd June 2012, the parties had already ceased to be husband and wife. Their case is that the court would then have no jurisdiction to order division of property of parties who were not is coverture.
2. The applicant countered the respondent's submissions by arguing that the preliminary objection was based on facts rather than on the law. She stated that evidence ought to be placed before the court to prove marriage.
3. A preliminary objection ought to be founded on pure points of law, not a point that would require proof of facts. The issues raised by the respondent are founded on facts. Whether the parties had ceased to be married by the time of the filing the originating summons is matter of proof.
4. The objection raised by the respondent is in my view without merit. I do hereby dismiss the same. The applicant shall have costs of the application.

DATED, SIGNED and DELIVERED at NAIROBI this 30th DAY OF January 2015.

W. MUSYOKA

JUDGE