

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MILIMANI

HIGH COURT CIVIL NO. 46 OF 2012

M N W.....PLAINTIFF

VERSUS

W N M & 3 OTHERS.....RESPONDENT

JUDGEMENT

The Court of Appeal held in *Peter Njenga -vs- Sophia Ndungu* Nairobi **CA Civil Appeal No. 2 of 2000** that the High Court has no jurisdiction to alienate lands between spouses during their lifetime or unbroken coverture, and that a judge faced with a suit where division of matrimonial property is sought in such a case ought to dismiss it.

It is common ground that the plaintiff and the 1st defendant in this matter are husband and wife. There is no evidence of separation or of pending matrimonial proceedings, and it is therefore safe to say that the parties are enjoying unbroken coverture. The plaintiff in this suit is seeking division of matrimonial property during unbroken coverture, against the injunction made in *Peter Njenga -vs- Sophia Ndungu* (supra).

It is against public policy for the court to entertain such a dispute as it would accelerate the break-up of the family involved. Public policy favours family unity and stability and should foster peace and reconciliation. Alienation of lands between spouses during unbroken coverture does not augur well for the well-being of the family as a unit.

The decision of the Court of Appeal in *Peter Njenga -vs- Sophia Ndungu* (supra) binds me. I have no jurisdiction over this matter for the reasons set out in that decision. The Originating Summons dated 14th August 2012 is therefore incompetent I hereby dismiss the it with costs.

SIGNED DATED and DELIVERED in open court this **30th** day of **August, 2013**.

W. M. MUSYOKA

JUDGE