



**LCL v WLM (Environment & Land Case 31 of 2019)  
[2025] KEELC 1165 (KLR) (12 March 2025) (Judgment)**

Neutral citation: [2025] KEELC 1165 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT & LAND CASE 31 OF 2019**

**CK NZILI, J  
MARCH 12, 2025**

**BETWEEN**

**LCL ..... PLAINTIFF**

**AND**

**WLM ..... DEFENDANT**

**JUDGMENT**

1. Through an amended plaint dated 19/11/2021, the plaintiff seeks the court to:
  - (1) Declare that all the properties, namely; West Pokot/Siyoi 'A'/4XX9, 4XX0, 4XX1, West Pokot/Chepkono/1X2, plot KX Makutano Township and BX Siyoi are matrimonial properties which vest in both the defendant and herself.
  - (2) An order that the defendant do transfer the aforesaid properties in their joint names in undivided shares, failing which the Deputy Registrar to execute all such documents, as would facilitate the transfer of the said properties.
  - (3) Issue an order preserving the said properties.
2. At the trial LCL, the plaintiff testified as PW1. She relied on the witness statements dated 9/4/2019 and 19/11/2021 as her evidence-in-chief. Her testimony was that she got married to the defendant on 29/5/1971 and they set up their matrimonial home in Kapenguria. PW1 told the court that their marriage was blessed with three children who are all adults. Further, PW1 testified that they acquired and developed five properties during the subsistence of their marriage, before the defendant left their matrimonial home and married a second wife.
3. PW1 told the court that due to some disagreement over her use of the land and some plots, the Pokot Elders resolved the issues, and she was given 34 acres of land to till, a plot KX Makutano Township, which has tenants while the co-wife was given 37 acres and a Plot B/X Siyoi. PW1 told the court that



- she later discovered that the defendant had secretly transferred the land West Pokot/Siyoi 'A'/4XX0 into his name and that of the minor children of the co-wife without her knowledge and was fearful that he would subsequently transfer Plot No. KX to third parties in order to defeat her interests.
4. Again, PW1 testified that even though she had been collecting rental income of about Kshs.50,000/= from Plot KX, the defendant has taken over and now intends to dispose of the same without her knowledge and consent. PW1 told the court that she was struggling to survive despite the rental income, yet the defendant was also running a business on Plot B/X Siyoi. PW1 produced a marriage certificate, letters dated 15/2/2018, 18/12/2018, 2/11/2018, 9/10/2018, elders' resolution, green cards for parcel No.4XX0 and 4XX9, and a title deed for West Pokot/Siyoi' A' 4XX0 as P. Exhibit Nos. (1), (2), (3), (4), (5), (6), (7), 8(a) & (b) and (9).
  5. PW1 told the court that she lives on parcel No. 4XX9. Further, PW1 stated that parcel No. 4XX0 was registered in the name of the defendant and the 2<sup>nd</sup> wife's children in 2005, and after discovering the same, she proceeded to place caution on all the properties to safeguard her interest. She denied knowledge of a plot exchange that took place between the defendant and one Kiptum, over parcel No. 4XX1.
  6. In cross-examination, PW1 told the court that she did not consent to the second marriage, which took place after they had jointly acquired and developed all the listed properties. PW1 told the court that there had been no divorce proceedings between her and the defendant; hence, she remained the legally wedded wife to the defendant
  7. Equally, PW1 said that the 2<sup>nd</sup> wife was forcefully living on parcel No. 4XX0. Similarly, PW1 denied consenting to the occupation of their properties by the children of the 2<sup>nd</sup> wife. Even though PW1 insisted that she jointly contributed towards the acquisition and the development of the suit properties, she admitted that she had no supporting documents to that effect.
  8. The defendant opposed the suit through an amended defense and a counterclaim dated 27/1/2022. The defendant admitted that the suit properties were acquired during the subsistence of their marriage with the plaintiff, save to add that the family of PK has been utilizing West Pokot/Siyoi 'A'/4XX1 for the last 20 years.
  9. The defendant averred that parcel No. West Pokot/Siyoi 'A'/4XX9 was their matrimonial home occupied by the plaintiff and her children and not the plot in dispute. The defendant averred that he solely developed Plot No. KX, whose rental income he utilized to pay school fees for the school-going children and to cater for his regular medical check-up. He denied that Plot No. KX falls under matrimonial property as defined by law.
  10. The defendant admitted that plot No. West Pokot/Siyoi 'A'/4XX0 was registered in the joint names of himself and the minors of the 2<sup>nd</sup> house; hence, the plaintiff has no claim over it. He denied any intention of disposing of the parcels of land. The defendant further averred that parcel No. West Pokot/Siyoi 'A'/4XX0 was being utilized by SCL, the 2<sup>nd</sup> house, while parcel No. West Pokot/Siyoi 'A'/4XX1 was being utilized by the family of the late KKK, after he exchanged it with another parcel of land.
  11. By way of a counterclaim, the defendant averred that the suit raised no cause of action since parcel No. West Pokot/Siyoi 'A'/4XX9 is not disputed as a matrimonial home; otherwise, the suit was filed solely to frustrate him from discharging his duties as the head of the family. The defendant counterclaimed for a declaration that parcel No. West Pokot/Siyoi 'A'/4XX9 is matrimonial property; parcel No. West Pokot/Siyoi 'A'/4XX0 belongs to the 2<sup>nd</sup> house, parcel No. West Pokot/Siyoi 'A'/4XX1 belongs to the family of the late KKK, though registered under his name; parcel No. West Pokot/Chepkono/1X2



is held in trust for CP and Plot No. KX at Makutano township and plot No. B/X at Siyoi Trading Centre belongs to SCL and for a permanent injunction restraining the plaintiff, her agents, servants, or employees from claiming or interfering with parcels No. West Pokot/Siyoi 'A'/4XX0, 4XX1, West Pokot/Chepkono/1X2, plot KX Makutano Township, and Plot BX at Siyoi trading center.

12. The plaintiff opposed the amended defense and counterclaim by a reply to the defense and defense to the counterclaim dated 11/3/2022. She insisted that parcel No. West Pokot/Siyoi 'A'/4XX1 formed part of the matrimonial property, and the family of PK are mere licensees with no proprietary interest in the land. Further, the plaintiff averred that the suit properties were acquired before the 2<sup>nd</sup> wife came on board; hence, neither the 2<sup>nd</sup> house nor any other person had any proprietary interest in the suit properties.
13. At the trial, WLM testified as DW1. He relied on a witness statement dated 27/1/2025 as his evidence-in-chief. DW1 told the court that the plaintiff was his first wife. DW1 stated that he was the registered owner of all parcel No. West Pokot/Siyoi 'A'/4XX9, 4XX0, 4XX1 and West Pokot/Chepkono/1X2 and Plot No. KX Makutano. DW1 said that in 2018, the plaintiff began claiming all the above properties and the matter was reported to the Pokot Council of Elders, which the plaintiff ignored or refused to attend.
14. Similarly, DW1 testified that the plaintiff was in possession of parcel No. West Pokot/Siyoi 'A'/4XX9 measuring 34 acres, whereas his second wife, SCL, was in possession of West Pokot/Siyoi 'A'/4XX0 measuring 11.68 acres. DW1 told the court that he had agreed with the late KKK to exchange parcel No. West Pokot/Siyoi 'A'/4XX1 measuring 4 acres with another parcel of land; hence, currently, the suit parcel was under the use of the said family. DW1 said that he gave parcel No. West Pokot/Chepkono/1X2 to his son CP as a gift and Plot B/X Siyoi trading center to his second wife, while he remained with Plot No. KX Makutano Township, which he has the rental income for personal use.
15. He relied on copies of title deed for West Pokot/Siyoi 'A'/4XX9, 4XX0, 4XX1, West Pokot/Chepkono/1X2, copy of the official search for West Pokot/Siyoi 'A'/384, copy of a sale agreement dated 16/5/2012, receipt for rates payment and a copy of an affidavit dated 15/8/2003 as D. Exhibit Nos. 1(a), (b) and (c), 2, 3, 4, 5 and 6 respectively. DW1 confirmed that the plaintiff had lived with him since 1970, their children are adults and parcel No. 4XX9 is exclusively occupied by the plaintiff from which she generates income. DW1 said he exclusively acquired and developed Plot No. KX Makutano, and being elderly and sickly, he was entitled to its income for upkeep.
16. DW1 told the court that he solely acquired the suit properties before he got married and though he is re-married, the suit was unnecessary. DW1 said that he had no supporting documents to support his allegation on the acquisition and the developments. Asked about D. Exhibit No. 1(a), DW1 admitted that it was registered in 2002, while parcel No. 4XX0 was registered in 2003 under his name.
17. DW1 denied wasting or intending to dispose of the suit properties. DW1 acknowledged that he acquired all the suit properties before remarrying in 1990. DW1 admitted that he was not taking personal care and maintenance of the plaintiff. DW1 admitted that he was the one keeping possession of the title documents to the suit properties.
18. The plaintiff relied on written submissions dated 1/3/2025 that she has proved her claim to the required standards, that the suit properties were acquired during the subsistence of their marriage contracted on 29/5/1971. Further, it is submitted that the prayers for an injunction in the counterclaim cannot be issued against the use of jointly acquired suit properties. Reliance was placed on GGM -vs- DR. MK Meru HC (OS) No. 1 of 2018 and Mugo Muiro Investment Ltd -vs- EWB & Others [2017] eKLR.



19. The issues calling for my determination are:
- (1) If the court has jurisdiction to hear and determine the suit.
  - (2) If the plaintiff has proved entitlement to prayers to share and register half of the suit properties.
  - (3) If the properties should be preserved.
  - (4) If the counterclaim is merited
  - (5) What is the order of costs?
20. In *WMM -vs- EMW* (Petition 33 (E037 of 2022 [2023] KECA 36 KLR (16<sup>th</sup> June 2023) (Judgment), the Court of Appeal held that the High Court has unlimited original jurisdiction under Article 165 3(a) of *the Constitution* in all matters and that Section 66(2) of the *Marriage Act* did not overrule or oust that jurisdiction. The court had also held that it has jurisdiction to handle matrimonial properties under Section 17 2(b) of the *Matrimonial Property Act*. At the Supreme Court, the appellant had asked the court to determine whether the Court of Appeal had erred in holding that the High Court has unlimited jurisdiction to determine the originating summons relating to both their marital dispute and matrimonial property. The Supreme Court declined to entertain the appeal, for it did not fall on the court as of right.
21. In *W Another -vs- N (E Land Appeal E035 of 2021)* [2024] KEELC 253 [KLR] (31<sup>st</sup> January 2024) (Judgment), the court observed that to the extent that the marriage remained undissolved, the determination of actual shares would await dissolution of the marriage and that Section 12 of the *Matrimonial Property Act* obligated the 2<sup>nd</sup> appellant to obtain consent of the respondent prior to any sale and transfer to the 1<sup>st</sup> appellant. The court said that reference to matrimonial property and want of spousal consent did not take the suit out of the jurisdiction of the court.
22. In *NWW -vs- LNM* [2022] eKLR, the court observed that under Section 17 of the *Matrimonial Property Act* and the *Marriage Act*, land disputes are cross-cutting issues, especially in the High Court and the sister court of equal status. Jurisdiction is critical in any action. It is established by either a statute or *the Constitution*. Parties through, craftsmanship, or consent cannot confer jurisdiction to a court.
23. The *Matrimonial Property Act* does not explicitly define the court. The Environment and Land Court, under Section 13 (2) of the *Environment and Land Court Act*, has jurisdiction to hear and determine disputes relating to land use, planning, title, choses in action, and other instruments granting enforceable interests. Article 45(3) of *the Constitution* provides that parties to a marriage are entitled to equal rights at the time of marriage, during the marriage, and the dissolution of marriage.
24. In this suit both the plaintiff and the defendant do not dispute that their marriage is still subsisting. The parties admit that the suit properties were acquired during the subsistence of the marriage and are under the use of both of them and some other 3<sup>rd</sup> parties. The plaintiff, other than seeking for a declaration of the suit properties as part of matrimonial property, also sought the preservation of the same and a share to be registered under their two names. On the other hand, the defendant, in his counterclaim, seeks for a declaration that only parcel No. West Pokot/Siyoi 'A'/4XX0 as belong to the 2<sup>nd</sup> house, parcel No. West Pokot/Chepkono/1X2 belong to a son with the 2<sup>nd</sup> wife, Plot KX Makutano as exclusively his, plot BX - Siyoi trading center as belonging to the 2<sup>nd</sup> wife, and a permanent injunction stopping the plaintiff from interfering or claiming the said properties, save for the parcel under her occupation.



25. Section 7 of the *Matrimonial Property Act* provides that ownership of property vests in the spouse according to the contribution of either spouse towards the acquisition and that it to be divided between the spouses if they divorce or their marriage is otherwise dissolved. In RMM -vs- BAM Civil Appeal 367 of 2011 [2015] KECA 1013 [KLR] (20<sup>th</sup> February 2015) (Judgment), the court observed that a court has to operate within its constitutional limits. The court is aware of Matrimonial Property Rules 2022. The Rules require that an application to enforce a claim relating to matrimonial property be made to the High Court. The Rules commenced operation on 29<sup>th</sup> July 2022.
26. Rule 5 provides that a spouse may apply for a declaration of any right or claim over the matrimonial property at any time after the dissolution of the marriage by a decree of a court given in the final determination of proceedings under the *Marriage Act* 2014, as part of the relief in a matrimonial case under Section 17 thereof. Rule 5(c) thereof relates to the person specified in Rule 4 (b) and (c) during the subsistence of a marriage.
27. The court with jurisdiction to hear and determine matrimonial cases and dissolution of marriage is the High Court. In JUV -vs- GKR [2021] eKLR, the court said that the procedure for affirming or rejecting that the property is both matrimonial and home is Section 17 of the *Matrimonial Property Act* 2013, which has jurisdiction under Article 165(5) of *the Constitution* is at High Court. The court, guided by Benson Ambuti Adega & 2 Others -vs- Kibos Distillers Ltd & Others remitted the matter to the Family Division of the High Court.
28. In this suit, the court finds it has no jurisdiction over whether or not the suit properties form part of the matrimonial properties and the respective shares of each spouse(s). As to the question of the use of the properties and whether the same can be preserved, pending the dissolution of marriage, shared or have the respective shares determined, I find that the plaintiff has, on a balance of probabilities, proved her claim. An inhibition order shall be issued to preserve the suit properties in their current status and occupation until the hearing and determination of the rest of the prayers in the court with jurisdiction to do so. The suit is hereby withdrawn and transferred to the High Court Kitale for disposal.

**JUDGMENT DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 12<sup>TH</sup> DAY OF MARCH 2025.**

In the presence of:

Court Assistant - Laban

Munialo for the Plaintiff present

Lowasikou for the Defendant present

Mr. Chebii for the Interested Party present

**HON. C.K. NZILI**

**JUDGE, ELC KITALE.**

