



Mburu v SBM Bank Kenya Limited & another (Environment & Land Case E228 of 2024) [2024] KEELC 7245 (KLR) (5 November 2024) (Ruling)

Neutral citation: [2024] KEELC 7245 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E228 OF 2024
LN MBUGUA, J
NOVEMBER 5, 2024**

BETWEEN

PHYLLIS WANJIKU MBURU PLAINTIFF

AND

SBM BANK KENYA LIMITED 1ST DEFENDANT

KEYSIAN AUCTIONEERS 2ND DEFENDANT

RULING

1. This suit was filed by way of a plaint dated 30.5.2024 where the plaintiff claims that House no. 129 erected on Nairobi/block 106/155 is matrimonial property, but the 1st defendant holds a first legal charge over the said property created in their favour by Joseph Muigai Mburu. She avers that the property was scheduled for sale on 12.6.2024, and she therefore seeks orders of injunction “restraining the defendant/respondent by themselves, their employees, servants, agents or anybody from selling by way of public auction and/or private to sell the Plaintiff’s property known as NAIROBI/BLOCK106/155.”
2. The suit was contemporaneously filed with an application dated 30.5.2024 where the plaintiff is similarly seeking orders of injunction.
3. In response thereof, the defendants filed a Preliminary Objection dated 23.7.2024 where they raise the following grounds that this Honourable court lacks jurisdiction to determine this suit as the subject matter of this suit is the claim by the plaintiff that the suit property i.e. Nairobi Block/106/155 is matrimonial property. The Jurisdiction to determine a dispute involving matrimonial property lies with the Family Division and not with this Honourable Court. Thus the suit and the Application amount to abuse of court’s process in view of the litany of suits, adding that the suit is resjudicata.



4. The defendants also filed a Replying Affidavit dated 24.7.2024 sworn by Stephen Kioko, a legal officer of the 1st defendant where he has given a chronology of the dispute which was apparently determined in the High Court matter.
5. The court gave directions for both the Application and the Preliminary Objection to be heard on 28.10.2024, but there was no appearance for the plaintiff despite the fact that she was served through her advocates.
6. I have considered all the issues raised herein. The issues falling for determination are whether this court has jurisdiction to determine this matter and whether the application is merited. In the case of Owners of the Motor Vessel “Lilian S” vs. Caltex Oil (Kenya) Limited [1989] KLR 1, it was held that;

“The question of jurisdiction is a threshold issue and must be determined by a judge at the threshold stage, using such evidence as may be placed before him by the parties. It is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it”.
7. The documents availed by the defendants indicate that the dispute was heard and determined in the Matrimonial Cause E047 OF 2021. Even at paragraph 6 of the plaint, the plaintiff is asserting her claim on the basis of matrimonial property. Certainly this court has no jurisdiction to deal with the matter as set out under Article 162 (2) (b) of *the Constitution* and Section 13 of the *Environment and Land Court Act*.
8. I further state that it is also good practice and correct thing for judges to respect judgments delivered by their brothers and sister judges, See - Salesio Mati Mwirichia vs Fredrick Mugambi and Another [2017] EKLK.
9. This far, I find the Preliminary Objection is merited, thus the application dated 30.5.2024 and the entire suit are hereby struck out for want of jurisdiction with costs to the defendants/respondent.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 5TH DAY OF NOVEMBER 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:

Odhiambo for Defendant

Court Assistant: Vena

