



REPUBLIC OF KENYA



**KENYA LAW**  
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**RT v SAG alias AGB (Matrimonial Case E003 of 2024)  
[2025] KEHC 3182 (KLR) (6 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 3182 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MARSABIT  
MATRIMONIAL CASE E003 OF 2024  
FR OLEL, J  
FEBRUARY 6, 2025  
IN THE MATTER OF DIVISION OF MATRIMOINAL PROPERTY**

**BETWEEN**

**RT ..... PETITIONER**

**AND**

**SAG ALIAS AGB ..... RESPONDENT**

**RULING**

**A. Introduction**

1. The petitioner vide her originating summons dated 3<sup>rd</sup> June 2024, filed this suit seeking a determination of her share in matrimonial properties known as [Particulars withheld] (Marsabit) measuring approximately 0.1HA and on parcel LR 28XX -Jirime measuring approximately 5 acres (hereinafter referred to as the suit properties). She simultaneously filed her notice of motion dated 3<sup>rd</sup> June 2024 seeking to have the court issue conservatory orders to stop the respondent from disposing off the said suit parcels of land. The said conservatory orders were issued/granted on 11<sup>th</sup> June 2024.
2. The Respondent in response filed a preliminary objection dated 19<sup>th</sup> September 2024 on the grounds that; the application herein is incurably defective, incompetent and bad in law for reasons that it contravenes section 7(2) of the Matrimonial property Rules and therefore urged the court to dismiss the suit with costs.
3. Section 7(2) of the *Matrimonial property Rules* provide that;  
“ where a spouse seeks to assert a right of claim or interest after the dissolution of the marriage by a decree of a court given in final determination of proceedings under the *marriage Act* (Cap 150), the claim shall be made by way of originating summons returnable before a judge or magistrate, in form MP1 as set out in the schedule.....”



4. A preliminary objection can only be raised purely on a point of law and not to question the truthfulness of a fact in a case because then it would be a breach of rules of procedure and ought not to be entertained by courts of law. In the case of *Aviation & Allied Workers Union Kenya vs Kenya Airways Limited & 3 others* [2015] eKLR, the Supreme Court quoted with approval Law J.A in *Mukisa Biscuits Manufacturing Case (Supra)*, where the learned Judge observed that:

“A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”

5. 14. To ascertain whether a point is pure law, the Supreme Court in *Aviation & Allied Workers Union Kenya (Supra)* held that;

“the Court has to be satisfied that there is no proper contest as to the facts. The facts are deemed agreed, as they are prima facie presented in the pleadings on record”.

6. The respondent’s contention that this suit was not instituted by way of originating summons is misplaced as the petitioner did file both the originating summons simultaneously with her notice of motion application. Both pleadings dated 3<sup>th</sup> June 2024 are in the court file. This suit was therefore properly instituted and does not suffer from any procedural defect as alleged.

#### **Disposition**

7. The preliminary objection dated 13<sup>th</sup> December 2024, therefore lacks merit and the same is dismissed with costs to the Respondent.

8. It is so ordered.

**RULING SIGNED AND DATED AT MARSABIT THIS 6<sup>TH</sup> DAY OF FEBRUARY, 2025.**

**FRANCIS RAYOLA OLEL**

**JUDGE**

**DELIVERED ON THE VIRTUAL PLATFORM, TEAMS THIS 6<sup>TH</sup> DAY OF FEBRUARY, 2025.**

In the presence of;

Mr. Manyange for Petitioner

Mr. Gitai Njuguna for Respondent

Mr. Jarso Court Assistant

