



REPUBLIC OF KENYA



KENYA LAW
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**VWK v PMM (Civil Appeal E066 of 2023)
[2025] KEHC 1594 (KLR) (7 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1594 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CIVIL APPEAL E066 OF 2023
AN ONGERI, J
FEBRUARY 7, 2025**

BETWEEN

VWK APPELLANT

AND

PMM RESPONDENT

*(Being an appeal from the Ruling of Hon. A. M. Obura (CM) in
Voi CMCC No. 152 of 2014 delivered on 21st September 2023)*

JUDGMENT

1. The Appellant’s application dated 22nd June 2023 which was seeking to set aside and quash the proclamation of the Appellant’s properties pursuant to a proclamation notice dated 27th May 2023 and 7th June 2023 was dismissed by the Trial Court.
2. The Appellant stated that the Respondent was her husband.
3. The trial court stated that there was no evidence to demonstrate that the attached properties were matrimonial properties.
4. The Applicant has appealed to this court against the dismissal of the application on the following grounds:-
 - i. That the honourable Magistrate erred in both law and fact in finding that the Appellant had not proved that the subject properties were matrimonial properties.
 - ii. That the honourable Magistrate erred in both law and fact in failing to consider the Appellant’s legal and equitable interests over the Proclaimed property.



- iii. That the honourable Magistrate erred in both law and fact in finding that the Appellant's application was an afterthought aimed at subverting the course of justice by the Judgment debtor.
5. The parties filed written submissions as follows:- the appellant submitted that the marriage certificate was produced in court and proved that the parties got married on 4th September 2010. This meant that every property acquired after the said date by either party qualifies to be considered as matrimonial property which each spouses' entitlement therein is based on their contribution.
6. That the properties listed in this case, the Motor Vehicles Reg No. KPB xxxT registered on 22nd June 2011 and KCC xxx registered on 3rd May 2015, which were also proclaimed by the Respondent, were acquired during the pendency of the marriage between the Appellant and the Judgment debtor and therefore without any evidence to the contrary, constitute matrimonial property.
7. The respondent alternatively submitted that on 27th May, 2023 the Auctioneers proclaimed the said motor vehicles but the Appellant objected claiming that the motor vehicles were matrimonial properties and she attached log books for the three motor vehicles which showed that motor vehicle registration number KPB xxxT belonged David Macharia Kang'ethe and Platinum Credit Ltd and motor vehicle Registration No. KCC xxxB belonged to David Macharia Kang'ethe and Mogo Auto Limited and motor vehicle registration number KAQ xxxQ belonged to Michael Kibia Macharia.
8. That the said David Macharia Kang'ethe was the 1st judgement debtor against whom execution was being done and whose motor vehicles were attached in 2022.
9. The respondent further submitted that the appellant was not the registered owner of the said motor vehicles either before or after the proclamation in 2022. There was also no evidence from the appellant that the motor vehicles were matrimonial properties and thus mere allegations. The respondent argued that there is no law that states that of a wife or husband is registered owner of a motor vehicle then the same cannot be attached when the registered owner has been adjudged as owing a judgement creditor.
10. The issues for determination in this appeal are as follows;
 - i. Whether the Applicant demonstrated that the attached properties were matrimonial properties.
 - ii. Whether the Trial court was right in dismissing the appellant's objection.
11. I find that there is no evidence that the vehicles attached were matrimonial properties or that they were jointly owned by the appellant/objector. The log books are in the names of David Macharia Kang'ethe and other parties who have not objected.
12. There is no dispute that Motor vehicle registration number KPB xxx T belonged David Macharia Kang'ethe and Platinum Credit Ltd and motor vehicle Registration No. KCC xxxB belonged to David Macharia Kang'ethe and Mogo Auto Limited and motor vehicle registration number KAQ xxxQ belonged to Michael Kibia Macharia.
13. The matter raised in the objection proceedings was determined by Sergon J, in the case of Ethics & Anti-Corruption Commission v DKK & 2 others [2020] eKLR where he relied on the decision in Kipsigis Farm Enterprises v Stephen Ngerechi & 2 others (2014) eKLR which dealt with a matrimonial home, unlike the present case.
14. Although the present case is not on a matrimonial home, the same law is in my opinion applicable.



15. Serгон J cited the decision of Emukule J in Kipsigis Farm Enterprises v. Stephen Ngerechi & 2 Others (supra) in which the court had stated as follows:

“Consequently, I find and hold that there is no law that bars a decree-holder from attaching a matrimonial home in execution of a decree and further he need not obtain the consent of a spouse where such interest has not been registered or declared by the court.”

16. Likewise, I find that there is no law that bars the decree-holder in the current case from attaching the said vehicles in execution of the decree.

17. The Motor Vehicles are not registered in the names of the appellant/objector.

18. The trial court was right in dismissing the application dated 22nd June 2023.

19. The appeal herein lacks in merit and the same is accordingly dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED THIS 7TH DAY OF FEBRUARY 2025 VIRTUALLY VIA MICROSOFT TEAMS.

ASENATH ONGERI

JUDGE

In the presence of:-

Court Assistant: Maina/Trizah

Miss Wamburua for Appellant

Mr. Odhiambo for Respondent

