



**MM v FNG (Family Originating Summons E003 of 2024)
[2025] KEHC 9204 (KLR) (10 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 9204 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
FAMILY ORIGINATING SUMMONS E003 OF 2024
DO CHEPKWONY, J
APRIL 10, 2025**

BETWEEN

MM APPLICANT

AND

FNG RESPONDENT

RULING

1. The Applicant moved this Court through Originating Summons dated 23rd January, 2024 seeking various orders:
 - a. Spent.
 - b. Spent.
 - c. Spent.
 - d. That pending the hearing and determination of the main suit herein this Honourable Court be pleased to issue orders restraining the Respondent either by herself, her agents and/or representatives from forcefully evicting the Applicant from Land Reference No. 182/139 (hereinafter referred to as suit Property).
 - e. A Declaration of this Honourable Court that the suit property, Land Reference Number 182/139 is matrimonial property.
 - f. An Order of permanent injunction restraining the Defendant either by herself, her agents, servants and or representatives from evicting the Defendant from Land Reference Number 182/139.
 - g. Costs.



2. The application is based on the grounds set out on its face and Supporting Affidavit sworn by Mburu Muchoki, the Applicant on 23rd January, 2024. According to the Applicant, he is a Spouse of the Respondent, the two having been married under Kikuyu Customary Law in 1993. That they have lived together in Kikuyu area and have been blessed with two(2) issues, who are now adults. The Applicant goes on to state that he started a Printing Press Business in 1999 and the Respondent starting working with him after sometime. And from the proceeds of the business, they bought land on which they build a home. This property, being Land Reference No.182/139 was registered in the name of the Respondent and they lived on it as a happy loving family.
3. However, in January, 2024, for unknown reasons, the Respondent asked the Applicant to move out of the property, which although was registered in her name, had been purchase and developed from the proceeds of his business and was therefore matrimonial property in which he has equal right to stay.
4. The Application is opposed by Notice of Preliminary Objection dated 26th March, 2024 which is based on the grounds:-
 - a. That this Honourable Court lacks jurisdiction to hear and determine the issues relating to matrimonial property noting that the parties have never been married under any law and the marriage being dissolved under the Marriage Act, Cap 150 Laws of Kenya.
 - b. That the entire application offends Sections 44, 55 and 59 of the Marriage Act and section 6,7 and 13 of the Matrimonial Property Act Cap 152 Laws of Kenya.
 - c. That the order relating to matrimonial property as prayed is premature and as such should not get audience from this Honourable court and the Applicant is illegally occupying and living in the said property and should be effected with immediate effect.
 - d. That the suit herein is misconceived , scandalous, frivolous, vexatious and a blatant abuse of the court process.
5. A Preliminary Objection having been raised by the Respondent herein, the court directed that the same be addressed on priority basis given that it may have the effect of disposing off the entire suit since it either challenges jurisdiction of the court or the admissibility of certain evidence or arguments, if upheld.
6. On what a Preliminary Objection is, the court in the case of *Mukisa Biscuits Manufacturing Ltd v West End Distributors* [1969] EA 696, held that:-

“---a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by a contract giving rise to the suit to refer the dispute to arbitration”.

In the same case Sir Charles Newbold, P. stated:-

“ 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. The improper raising of preliminary objections does nothing but unnecessarily increase costs and on occasion, confuse the issue, and this improper practice should stop”.



7. In one of the recent cases, being the case of Pius Kamau Kinuthia v David Mueithi Kanyi & Another (Environment & Land Case No.E007 of 2023)[2024] KEELC 1625 (KLR), the court had this to say on what constitutes a ‘Preliminary Objection’. That:-

“A Preliminary Objection rests on the proposition that when raised, its fundamental accomplishment will have a bearing on disposing of a matter because it raises pure points of law. It also underscores the need for prudent management of time as a court resource by summarily flagging out a frail and hopeless suit that if admitted to full trial, will be a wash of judicial time and will not serve the interest of justice. One will not be required to look elsewhere to find an answer as to whether a Preliminary Objection is sustainable or not, but to look at the pleading and discover that the suit is a non-starter.”

8. In the instant case, the Respondent has challenged the jurisdiction of this Court on the ground that there has never been a marriage between herself and the Applicant and that the claim relating to matrimonial property is premature as the Applicant is illegally occupying and living on the said property. However, upon analysing the facts and arguments of this case, the Court finds that the Applicant’s prayer arises from a claim that there exists a marriage between himself and the Respondent which was solemnised under the Kikuyu Customary Law and period of cohabitation. This is therefore an issue of fact and not law, hence can only be ascertained by the parties presenting their respective facts of the case for the court to ascertain and or determine:
- a. Whether or not a marriage exists between the two parties; and or,
 - b. Whether the Land Reference No.182/139 is indeed matrimonial property where each one of them has equal rights to.
9. The upshot is that:-
- a. The Notice of Preliminary Objection lacks merits and is hereby dismissed with costs to the Applicant.
 - b. The parties to proceed with the hearing of the Originating Summons dated 23rd January, 2024.
 - c. The Respondent to file and serve her response within fourteen (14) days from the date hereof.
 - d. Mention on 24th April, 2025 for parties to confirm compliance and take directions on hearing of the Originating Summons dated 23rd January, 2024. Interim orders issued herein be and are hereby extended till then.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 10TH DAY OF APRIL, 2025.

D. O. CHEPKWONY

JUDGE

