



BKN v FKM (Civil Case E019 of 2024) [2025] KEHC 6076 (KLR) (Family) (8 May 2025) (Ruling)

Neutral citation: [2025] KEHC 6076 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
CIVIL CASE E019 OF 2024
CJ KENDAGOR, J
MAY 8, 2025**

BETWEEN

BKN APPLICANT

AND

FKM RESPONDENT

RULING

1. The marriage between the parties herein was dissolved. The Applicant filed an Originating Summons application seeking division of matrimonial property listed as;
 - i. Ngong/Ngong/100/2X;
 - ii. Ngong/Ngong/100/2X;
 - iii. Ngong/Ngong/100/2X;
 - iv. Property in Mwiki-Kasarani (reference details not indicated)
2. Before the same could be processed for hearing, the Respondent filed a Notice of Preliminary Objection dated 21st February, 2025, raising the following grounds;
 - a. That this Honourable Court lacks jurisdiction to hear and determine the matter in issue in the Applicant's cause which is division of matrimonial property between the Applicant and Respondent herein;
 - b. That the marriage between the Applicant and Respondent was dissolved through the judgment dated 30th July, 2024 by the Hon. Hellen C. Maritim, Senior Resident Magistrate, Ngong Law Courts;



- c. That the matrimonial home where the Applicant and Respondent lived after the celebration of their marriage is in Ngong Town, Kajiado County and thus the cause of action arose within the jurisdiction of the Magistrate's Court at Ngong;
 - d. That the suit properties are in Ngong within Kajiado County and within the jurisdiction of the Ngong Magistrate's Court;
 - e. That the value of the property does not exceed Kenya Shillings Twenty Million (Kshs.20,000,000.00);
 - f. That the suit matrimonial property is within the pecuniary jurisdiction of the magistrate's court;
 - g. That in the alternative and without prejudice to the foregoing, the High Court at Kajiado has territorial jurisdiction over this matter;
 - h. That the filing of this suit before this Honourable Court is malicious, an abuse of the Court process, calculated to defeat the ends of justice and should be dismissed with costs to the Respondent/Applicant;
 - i. That in light of the foregoing this Honourable Court lacks jurisdiction to entertain the matter before it;
 - j. That the matter should therefore be transferred to either Ngong Magistrates Court or High Court at Kajiado for hearing and determination.
3. The Preliminary Objection was canvassed by way of written submissions.

Applicant's case

4. The Applicant submitted that the Preliminary Objection lacks merit and she invited the Court to dismiss the same. She submitted that the properties detailed in the Originating Summons are in Kajiado and Nairobi Counties and that, therefore, this Court has jurisdiction to hear and determine the matter. Further, she submitted that the value of the property cannot be determined from the pleadings; thus, the objection does not satisfy the criteria for a Preliminary Objection.
5. The Applicant invoked the unlimited original jurisdiction of the High Court as provided for under Article 165 (3) of *the Constitution* of Kenya.

Respondent's case

6. The Respondent submitted that the properties are situated at Ngong, within the jurisdiction of Ngong Magistrates Court and or Kajiado High Court.
7. The Respondent submitted that this Court lacks territorial jurisdiction to hear and determine the claim and invited the Court to uphold the Preliminary Objection and consequently strike out the suit, with costs to be borne by the Applicant.

Analysis and determination

8. The primary issue for determination is whether the Preliminary Objection is merited.



9. The case of *Mukisa Biscuits Manufacturing Ltd v West End Distributors (1969) EA 696* expounds on the issue of what constitutes a Preliminary Objection. The Court observed as follows:
- “... 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.”
10. Jurisdiction is a point of law and may be raised as a Preliminary Objection. The main dispute on jurisdiction is the issue of territorial and pecuniary jurisdiction of the Court.
11. The location of the suit properties has not been disputed. The three parcels of land whose title references have been given are in Ngong, Kajiado County. There is one undisclosed property, which the Applicant has pleaded is in Nairobi.
12. From the Affidavit in support of the OS application, I gather that the Applicant is a resident in Canada. The Respondent is yet to file a response to the OS application. The OS indicates that the Respondent is resident in Nairobi and his address of service is indicated as Nairobi. The annexure to the Affidavit of service on record, sworn on 3rd December, 2024, indicates a physical address in Nairobi where the Respondent requested that the documents served upon him via email and WhatsApp be delivered.
13. Rule 6 of the Matrimonial Property Rules provides: -
- “ 1. An application to enforce a claim relating to matrimonial property may be made in any proceedings under the Act —
- a. to the High Court in any case where the value of the matrimonial property which is the subject matter of the claim exceeds the pecuniary jurisdiction of a magistrate’s court; or
- b. to a magistrate’s court having civil jurisdiction to adjudicate matters within the court’s pecuniary jurisdiction.
2. Where the spouses profess the Muslim faith, the court to which an application is made may, on the request of the parties, be guided by Muslim law.”
14. Rule 6 is not couched in mandatory terms and only touches on pecuniary jurisdiction. From the pleadings on record, it is not possible to determine the value of the properties in issue.
15. Further, from what is on record, the Respondent is resident in Nairobi. There is no indication of hardship or prejudice that would affect access to justice, given that the matter has already been filed in Nairobi.
16. The jurisdiction of the High Court is granted by Article 165 (3) of *the Constitution* of Kenya. The High Court has unlimited original jurisdiction in criminal and civil matters.
17. In the decision in *WAH v JWH [2023] KEHC 20121 (KLR)*, G Mutai, J addressed the issue of convenience and expedience and stated as follows:-
- “... it is my finding that this Court has jurisdiction to hear and determine the matter and may do so where it is just and expedient.”
18. This Court has reviewed the Preliminary Objection, after considering the arguments presented in the preceding paragraphs and weighing the relevant legal statutes and Constitution, the Court finds that



the High Court in Nairobi has jurisdiction to hear and determine the matter at hand. Therefore, the Court will allow the proceedings to continue in Nairobi.

19. The Preliminary Objection is hereby dismissed with costs in the cause.

20. It is so ordered

DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 8TH DAY OF MAY, 2025.

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C. KENDAGOR

JUDGE

In the presence of:

Court Assistant: Amin

Mr. Kibaara, Advocate for the Applicant

No attendance for Respondent

