



**Lemein v Kiplimo (Matrimonial Cause E001 of 2024)
[2025] KEHC 8348 (KLR) (12 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8348 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
MATRIMONIAL CAUSE E001 OF 2024**

RB NGETICH, J

JUNE 12, 2025

**LEMEIN V KIPLIMO (MATRIMONIAL CAUSE E001 OF
2024) [2025] KEHC 8348 (KLR) (12 JUNE 2025) (RULING)**

BETWEEN

STELLA LEMEIN PETITIONER

AND

DOUGLAS KIPLIMO RESPONDENT

RULING

1. The Petitioner filed originating summons brought under the provisions of section 3A of the [Civil Procedure Act](#) and sections 2, 6, 7, 9, 14 and 17 of the Matrimonial Properties Act, 2013 claiming beneficial interest in respect of all those properties known as BARINGO/KAPROPITA/1XX9 and BARINGO/KAPROPITA/1XX3 and motor vehicle registration number KCT 1X0H Toyota premio. In the petition, the Petitioner is seeking following Orders:-
 - i. THAT a declaration do issue to the effect that all the under listed properties which are registered in the names of the respondent including a motor vehicle currently in the custody of the respondent are held beneficially and/or in trust for the Petitioner.
 - b. Motor vehicles registration numbers:- KCT 1X0 H Toyota premio.
 - c. Land parcel numbers: BARINGO/KAPROPITA/1XX9 and BARINGO/KAPROPITA/1XX3.
- ii. THAT an Order do issue declaring that 50% or such other or higher portions of the properties aforesaid, are held by the Respondent in trust and for the beneficial interest of the Petitioner.
- iii. THAT an Order do issue that the properties and the income from the motor vehicle be settled in proportions aforesaid or as the court may order.



- ii. THAT the Respondent be condemned to pay the costs of the originating summons.
2. The Petitioner subsequently filed an application dated 28th June, 2024 brought under the provisions of Order 40 Rule 7 and Order 51 Rule 1 of the Civil Procedure Rules, Sections 1A, 1B, and 3A of the Civil Procedure Act, seeking for orders that:
 - i. THAT the Honourable Court be pleased to set aside/vary the orders made on 15th July, 2024 maintaining the status quo in respect of Motor Vehicle Registration Number KCT 1X0H.
 - ii. THAT the Honourable Court be pleased to reinstate the orders made on 2nd July, 2024, directing the Respondent to release Motor Vehicle Registration Number KCT 1X0H to the Applicant.
 - iii. THAT the costs of this application be in the cause.
3. The application is premised on the grounds that the Applicant is the registered owner of Motor Vehicle Registration Number KCT 1X0H and has been using the motor vehicle for family use, particularly in transporting and accommodating the needs of the children of the marriage, for whom she has custody.
4. That the vehicle has been parked since March 2024, exposing it to the risk of vandalism and deterioration, which would lead to significant loss of value and utility.
5. That the status quo orders have become prejudicial to the Applicant's interests and contrary to the welfare of the children involved who require transportation to school and other daily activities and it is in the interest of justice that the orders maintaining the status quo be set aside or varied to prevent further wastage and allow the Applicant to utilize her property for its intended purpose.
6. The application is further supported by the annexed affidavit of Stella Lemein who avers that she is the registered owner of Motor Vehicle Registration Number KCT 1X0H.
7. She avers that on 2nd July, 2024 this honourable court issued orders directing the respondent to surrender the custody of the motor vehicle to her and upon service of the orders and the application, the respondent moved this court and obtained orders maintaining status quo that was prevailing at the time which meant that the motor vehicle remained in the custody of the respondent.
8. She avers that despite having the custody of the motor vehicle, the respondent has parked it and does not use it and the prolonged parking of the motor vehicle without usage has subjected it to unnecessary risks, including vandalism and mechanical degradation.
9. She avers that she has been using the vehicle to serve the needs of the children of the marriage, and non-utilization of the vehicle has adversely affected their daily life, school runs, and essential family activities and she is apprehensive that the continued maintenance of the status quo will lead to significant loss, degradation and hardship thus it is only fair and just that this application is allowed for the foregoing reasons.

RESPONSE TO APPLICATION.

10. In response, the Respondent filed preliminary objection on 8th July 2024 on the following grounds:-
 - a. That the Notice of Motion application herein is frivolous, vexatious and an abuse of the due process of the Honourable Court.
 - b. That the application and suit is bad in law because the petitioner failed to disclose material facts i.e. there is another suit (Kab Spmc No. E012 of 2024) which deals with substantives issues of Motor vehicle Number KCT 1X0H thus the suit herein is a recipe for sub-judice rule.



- c. That the matrimonial properties cause herein offends the Rules of Civil Procedure Rules 2021(Cap 21) laws of Kenya).
- d. That consequent to the foregoing grounds, the application herein & matrimonial cause be dismissed with costs to the petitioner.

REJOINDER BY APPLICANT.

11. In response to preliminary objection, the applicant filed replying affidavit where she avers that the rule of sub judice does not apply to the petition before this court as the cause concern issues of division of matrimonial property acquired during the subsistence of their marriage but the matter before the Magistrate Court involves money lent between the respondent herein and his father who has sued the two of them and the objection is baseless and lacks merit as all the requisite documents were filed including an affidavit in support of the Originating Summons.
12. That pursuant to section 17 of the *Matrimonial Property Act*, it is only this honorable court that has the Jurisdiction to determine questions related to the division of matrimonial property and the matrimonial case before this honorable court meets the thresh hold under the *Marriage Act* and the *Matrimonial Property Act* for the determination of rights and interests in property acquired during the subsistence of the marriage.
13. That the dispute in the Magistrate Court does not preclude this honorable court from adjudicating on issues of matrimonial property as the issues in dispute in the Magistrate Court is a loan advanced to the respondent by his father and does not in any way affect her rights as a spouse.
14. That the properties before court for distribution is not only the Motor Vehicle but also the Matrimonial home which is now in the hands of a third party and staying these proceedings will be prejudicial to her as the respondent continues to enjoy the properties to her exclusion and it is in the best interest of justice that the preliminary objection be dismissed and the petition proceeds for hearing on merit.
15. Directions were given that the preliminary objection and the application be canvassed by way of written submissions. Only the respondent filed written submissions.

RESPONDENT'S SUBMISSIONS.

16. The respondent submits that the issues for determination are:-
 - a. Whether the application date 28th June, 2024 is frivolous, vexatious and an abuse of the due process of the court.
 - b. Whether the matrimonial cause herein is sub- judice and whether the matrimonial cause herein offends the rules of Civil Procedure Rules (Cap 21) Laws of Kenya.
17. On whether the application dated 28th June 2024 is frivolous, vexatious and an abuse of the due process of the court, the Respondent submits that the petitioner herein became impatient and as a result, violated the rules of procedure by rushing to court as Motor Vehicle KCT 1X0H forms part of the subject matter in case number Kabarnet Spm Civil Suit No E012 of 2024 and the same should have been dispensed with first as it involves ownership; that the petitioner failed to disclose that there's a case filed in the Magistrates Court Kab Spm Civ Suit No. E012 of 2024 which deals substantively with the issues of ownership and possession of the Motor Vehicle Registration Number KCT 1X0H.The Respondent placed reliance on Section 6 of the *Civil Procedure Act* (Cap 21) and Constitutional Petition No. E009 of 2021 Benjamin Gitonga Andrew (suing as legal representative of the estate of



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and submit that the application is bad in-law and urged this court to strike out the applicant's suit.

18. The Respondent further submit that the pleadings herein filed by the petitioner do not contain a verifying affidavit thus offending the rules of Civil Procedure code as provided under Order 4 Rule 1(2) and Order 4 Rule 1(4) and relied on the case of JACKLINE OMBONGI=VERSUS=AGNES NYANCHAMA& ALLOYS MOSETI (KISII CMCC NO. 548 OF 2010) (KLR) 2016 where the trial magistrate struck out the suit as there was no accompanying affidavit sworn by the plaintiff to verify the correctness of the averments contained in the plaint and in view of the fact that the pleadings offend the Civil Procedure Rules (Cap 21) Laws of Kenya, they are not properly before this court.
19. The Respondent further submits that the application herein does not meet the threshold set out under section 6(1) (c) 7 and 13 of the Matrimonial Property Act Cap 152 laws of Kenya. That Section 6 (i) (c) of the Matrimonial Property Act Matrimonial property means: -
 - a) The matrimonial home or homes
 - b) Household goods and effects in the matrimonial home or homes
 - c) Any other immovable and movable property jointly owned and acquired during the subsistence of the marriage.
20. That in Kabarnet Spmc Civil Suit No. E012 of 2024, the ownership of Motor Vehicle KCT 1X0H is contested and the petitioner has listed the Motor Vehicle as part of matrimonial properties in her application. That if the petitioner's suit is allowed, it raises questions of sub-judice whereby the matter before the lower court is between the same parties and involves the same subject matter.
21. In conclusion, the Respondent submit that the petitioner's application and suit herein is frivolous, vexatious, bad in law and amount to abuse of the due process of the court. Secondly, the pleadings themselves offend section 6 of the Rules of Civil Procedure and urge this court to dismiss the application and the suit herein with costs to the Respondent.

ANALYSIS AND DETERMINATION.

22. I have considered grounds of the application, preliminary objection, averments by the applicant and submissions filed and wish to consider the following issues:-
 - i. Whether this matter is subjudice.
 - ii. Whether this court ought to set aside/vary the orders issued on 15th July, 2024 (and reinstate the orders made on 2nd July, 2024, directing the Respondent to release Motor Vehicle Registration Number KCT 1X0H to the Applicant.)

(i) Whether this suit is sub-judice

23. The Respondent filed preliminary objection arguing that there is another case Kabarnet Spmcc No. E012 of 2024 where the ownership of Motor Vehicle KCT 1X0H is contested yet the petitioner has listed the Motor Vehicle as part of matrimonial properties in her application and argued that this matter is sub-judice as the issue of ownership of the vehicle herein which is listed as matrimonial property is being litigated between the same parties herein.
24. On the other hand, the applicant argue that the dispute herein is distribution of matrimonial properties and there are other properties for distribution besides the motor vehicle and the matter before the lower court involve money advanced and they have both been sued by the Respondent's father.



25. The provision of Section 6 of the *Civil Procedure Act* provides for sub-judice rule and bars a court from proceeding over a matter that is pending before another court. The section provides as follows:-

“No court shall proceed with trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed”.

26. The dispute before this court relate to distribution of matrimonial properties and the petitioner has averred that there are other matrimonial properties for distribution. This court has jurisdiction to determine distribution of property. The lower court is not seized with jurisdiction to distribute matrimonial property. The petitioner is therefore properly before this court. If there is any matter concerning distribution of property before lower court, then the matter is in the wrong forum. This matter cannot therefore be said to be sub-judice.

(ii) Whether this court vary /set aside orders issued on 15th July 2024

27. The Applicant urges this court to vary/set aside status quo order issued by this court on 2nd July 2024 in respect of motor vehicle Registration Number KCT 1X0H. The applicant has argued that the vehicle is wasting away and she is denied the use of the vehicle to ferry children. I note from the record that I clarified on 17th July 2024 that the vehicle remains with the person who was in possession of the vehicle when the orders for status were issued. I have not heard the parties herein to enable me make determination in respect to the vehicle. I will be able to make an informed decision upon hearing the parties herein.

28. FINAL ORDERS: -

- a. Preliminary objection dated 8th July 2024 is hereby dismissed.
- b. Application dated 28th June 2024 for review of status quo orders is hereby dismissed.
- c. Hearing of this petition to proceed on priority basis.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT ELDAMA RAVINE HIGH COURT (SUB-REGISTRY) THIS 12TH DAY OF JUNE 2025.

RACHEL NGETICH

JUDGE

In the presence of:

No appearance by parties.

CA, Karanja.

