



**CNK v LLL (Civil Appeal E014 of 2024)  
[2025] KEHC 9810 (KLR) (Family) (4 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 9810 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
CIVIL APPEAL E014 OF 2024  
PM NYAUNDI, J  
JULY 4, 2025**

**BETWEEN**

**CNK ..... APPELLANT**

**AND**

**LLL ..... RESPONDENT**

*(Being an appeal against the ruling of Hon. J.A. Aduke, Senior Principal Magistrate delivered on 6th February 2024 in Milimani Divorce Cause No. E1174 of 2023)*

**JUDGMENT**

1. Vide Memorandum of Appeal dated 21<sup>st</sup> February 2024, the Appellant herein challenges the ruling of the Trial Court upholding preliminary objection raised by the respondent challenging the jurisdiction of the trial Court.

2. The impugned ruling is reproduced here-

I have seen preliminary objection dated 01/11/23 by the respondents and considered the oral submissions of both petitioner’s counsel and defence counsel on the same. Whereas it is my view that some of the issues raised (e.g. No. 3) are those that can be ventilated during, a trial. I am aware that jurisdiction is everything without it court must down tools. I am aware of the territorial jurisdictional limits under the magistrate’s court Act, 2015 and note that petitioner’s own admission at Paragraph (1) of the undated petition, before me. I note that this Court lacks territorial jurisdiction to entertain this suit. Suit struck out. Petitioner is at liberty to file a suit before the Magistrate’s Court in Ngong. Right of Appeal. File closed.

3. The Appeal was canvassed via written submissions. In submissions dated 26<sup>th</sup> March 2025, the appellant frames the following as the issues for determination-



- a. Whether the trial magistrate was right and justified in law and fact to dismiss the Appellant's case for want of jurisdiction?
  - b. Whether it is right and just to either reinstate the suit by transferring it to another subordinate Court of competent jurisdiction?
  - c. Who bears costs of the suit?
4. On the first issue whilst conceding that jurisdiction is everything, the appellant submits that the Court erred in finding that it did not have jurisdiction, when it was evident that the cause of action arose in Nairobi. Reference is made to the decisions in *Executive Super Riders Limited v Albery Joacquinne Osumba* [2022] KEHC 2863 (KLR) and *Selina Vukinu Ambe v Ketan Shashikant Khatri* [2020] KEHC 598 (KLR), on the interpretation of Section 15 of the *Civil procedure Act*.
  5. It is submitted that the Appellant had pleaded that they established their matrimonial home in Nairobi and therefore the cause of action arose at Nairobi.
  6. On the 2<sup>nd</sup> issue, it is submitted that in light of the provisions of Article 159 (2) (d) the Court should reinstate the matter and transfer it to a Court of competent jurisdiction pursuant to the provisions of Sections 17, 18 and 218 of the *Civil Procedure Act*. Reliance is placed on the decisions in *Julius Lekuruito & Another vs Nottingham Mwangi & Anor* [2018] eKLR; *Waweru v Prime Auto Solutions Ltd (Miscellaneous Civil Application No. E053 of 2023 [2024] KEHC 1971 (KLR)*; *Nickson M. Chanda v Angela Kamwaria* [2009] eKLR and *Diyo Nyamawi Diyo v Kennedy Ragiri Isoe (Misc. Civil Suit No. 19 of 2004. [2004] KEHC 1102 (KLR)*
  7. The Respondent's submissions are dated 12<sup>th</sup> May 2025. The issues for determination are framed as-
    - i. Whether the trial court erred in law and in fact in dismissing the suit for want of territorial jurisdiction.
    - ii. Whether this Court should reinstate the suit before the trial court by transferring it to another court with competent jurisdiction.
  8. On the 1<sup>st</sup> issue the respondent reiterates that jurisdiction is everything and states the jurisdiction is conferred on Magistrate's Court by Section 15 of the *Civil Procedure Act*. It is stated that the respondent having denied that he resided in Nairobi at the time of filing the divorce Petition, the appropriate Court was Ngong where it was alleged that the Marriage was formalised and not the Milimani Magistrate's Court.
  9. On the 2<sup>nd</sup> issue, it is submitted that there isn't a competent suit available for transfer to another court and in any event in the memorandum of appeal, the appellant did not seek reinstatement of the suit and transfer to a court of competent jurisdiction. Reference is made to the decision on *Njeru Another v Nyakundi (Civil Appeal E021 of 2021) [2022] KEHC 13963 (KLR)(11<sup>th</sup> October 2022)(Judgment)* and *Phoenix of E.A Assurance Company Limited v S.M. Thiga t/a Newspaper Service [2019] KECA 767 (KLR)*

### **Analysis and Determination**

10. Having considered the Memorandum of Appeal and the respective submissions, the issues for determination are-
  - i. Whether the trial Court erred in upholding the preliminary Objection?
  - ii. If in (i) is in the affirmative what are the consequential orders this Court ought to make?



- iii. Who should pay costs of this application.
11. On the 1<sup>st</sup> issue, the beacons delineating the territorial jurisdiction of the Magistrate’s Court are set out under Section 15 of the [Civil Procedure Act](#). Section 15 provides-
- Other Suits to be instituted where the defendant resides or cause of action arises.
- Subject to the limitations aforesaid, every suit shall be instituted in a court within the local limits of whose jurisdiction-
- a. The defendant or each of the defendants ( where there are more than one) at the time of the commencement of the suit, actually and voluntarily resides or carries on business, or personally works for gain; or
  - b. Any of the defendants ( where there are more than one) at the time of the commencement of the suit, actually and voluntarily resides or carries on business, or personally works for gain, provided either the leave of the court is given, or the defendants who do not reside or carry on business, or personally work for gain, as aforesaid acquiesce in such institution; or
  - c. The cause of action, wholly or in part arises.
12. The basis of the preliminary objection was that the marriage was celebrated in Ngong Kajiado County. In arriving at her decision the trial court referred to Section 7 of the Magistrate’s Act and observed that the averments by the Petitioner in Paragraph 1 of the Petition ousted the jurisdiction of the Court. The appellant contends that the Cause of action arose in Nairobi as the parties had established a matrimonial home in Nairobi.
13. As observed in *Waweru v Prime Auto Solutions Limited* (Miscellaneous Civil Application E053 of 2023) [2024] KEHC 1971 (KLR) (29 February 2024) (Ruling), the Magistrates’ Court [Act No. 26 of 2015](#) has abolished the provision of country wide jurisdiction of magistrate’s court, and thus the [Civil procedure Act](#) has the substantive provisions regarding the jurisdiction of magistrate’s Court.
14. I find therefore that the learned magistrate erred in finding that Section 7 of the Magistrate’s Act delineates territorial jurisdiction. The section provides for the pecuniary and subject matter jurisdiction of the Magistrate’s Court. These were not the basis of the preliminary objection.
15. At paragraph 2 of the Petition, the Petitioner stated that after the celebration of the marriage, the Petitioner lived and cohabited with the Respondent in Nairobi within the Republic of Kenya until June 2021. At paragraph 3 of the Answer to the Petition, the appellant denied the contents of paragraph 2 and put the Respondent to strict proof.
16. Evidently then the issue of whether or not the appellant and the respondent set up a matrimonial home and therefore the cause of action arose in Nairobi was not an issue to be determined by way of preliminary objection; as stated in the locus classicus case of *Mukisa Biscuits Manufacturing Company Ltd v West End Distributors* [1969] EA 696 –

So far as I am aware, 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 parties are bound by the contract giving rise to the suit to refer the dispute to arbitration



17. The Petition situated jurisdiction in the Court at Milimani by virtue of the fact that it is submitted that the parties set up a home in Nairobi and the actions complained of occurred in Nairobi. The cause of action therefore arose in Nairobi.
18. In light of the foregoing, I find that the trial court erred in upholding the Preliminary Objection. The Appeal is therefore allowed, the Petition is reinstated and referred back to the Family Division at the Milimani Chief Magistrate's Court for hearing and determination.
19. Owing to the relationship between the parties there shall be no order as to costs.

**SIGNED, DATED and DELIVERED VIRTUALLY at NAIROBI this 4<sup>th</sup> day of July 2025**

**P. M. NYAUNDI**

**JUDGE**

In the Presence of

Michael Nyuma for Respondent

Gichohi Waweru for Applicant

Fardosa Court Assistant

