



**JWK v AKN (Civil Suit E085 of 2022) [2025] KEHC 12711 (KLR)
(Family) (18 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12711 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
CIVIL SUIT E085 OF 2022
HK CHEMITEI, J
SEPTEMBER 18, 2025**

BETWEEN

JWK PETITIONER

AND

AKN RESPONDENT

RULING

1. This ruling relates to the application dated 11th July, 2024 filed by the Applicant, AKN seeking for orders that:
 - a. Spent.
 - b. The honourable court be pleased to issue orders consolidating this instant suit HC Petition No. E085 of 2023: JWK Vs AKN and HCCOM PET No. E013 of 2023: JWK Vs AN.
 - c. Upon consolidation, the Respondent/Applicant be granted subsequent leave to amend his statement of defence and or response in the respective suits.
 - d. The honourable court herein be pleased to issue any such orders as it deems necessary.
 - e. Costs of this application be provided for.
2. The application is based on the grounds on its face thereof and supported by affidavit by AKN on 11th July, 2024.
3. He avers inter alia that he was previously married to J, with whom he jointly owned several properties. Their marriage was legally dissolved, and they no longer cohabit as spouses. Since the divorce, they have failed to reach an agreement on how to divide certain properties, including shares in Calikam Company Limited where both remain directors. Other disputed assets include land parcels: L.R. Nos. Ngong/



Ngong/xxxxx, Ngong/Ngong/ xxxxx, Ngong/Ngong/xxxxx, and Ngong/Ngong/xxxxx; a boutique named [Particulars withheld] Fashions, Apartment Bxxx at Avana Residence on Riara Road, a kitchen unit at NextGen Mall; and other properties yet to be listed.

4. The Respondent has since filed a petition dated 30th August, 2023, seeking court intervention in dividing these properties and sharing any proceeds. She also instituted HCCOM PET No. E013 of 2023 (Nairobi): JWK vs. AKN, seeking similar reliefs on property division and ownership.
5. He went on to aver that the current suit is scheduled for mention on 13th November, 2024 before Hon. Justice Chemitei, while HCCOM PET No. E013 OF 2023 is before Hon. Lady Justice Njoki Mwangi and is set for mention on 30th September, 2024. Both suits involve the same parties, disputes and properties, with overlapping legal and factual issues. The evidence submitted in both cases is also largely identical. Given the similarities, separate hearings would be redundant. Consolidating the suits would prevent duplicity, promote judicial efficiency and aid in a fair and cost-effective resolution. Accordingly, he requests the court to consolidate the two suits for joint hearing.
6. Neither case has proceeded to full hearing, and the consolidation would not disadvantage the Respondent nor compel her to amend her pleadings or withdraw any petition. Granting the orders would safeguard his rights, prevent irreparable harm and serve the interests of justice, time and cost efficiency.
7. The application is opposed vide replying affidavit sworn by J Wanjiru Kamau on 13th December, 2024.
8. She avers inter alia that the application is frivolous, incompetent and a clear misuse of the court process. It does not meet the legal threshold for granting consolidation of the two referenced cases. Although the parties involved are the same, the subject matter and legal issues in each case are entirely distinct. Specifically, HCCOM PET 013/24 concerns a limited liability company, Calikam Company Limited, where both parties are directors and equal shareholders. Shares in a company do not qualify as matrimonial property, and the family court lacks jurisdiction over the allocation of company shares.
9. This she averred is precisely why she initiated separate suits in the Family and Commercial Divisions. She urges the court to rely on precedents such as Civil Suit No. 6 of 2018 (O.S.) AKK v PKW [2018] eKLR and HCC O.S. No. 8 of 2017 MWG v DSM [2021] eKLR.
10. She deponed that the application was unmerited for the reasons that while the parties are former spouses, the matters in dispute differ substantially. Numerous judicial decisions affirm that company shares are not matrimonial property and thus fall outside the family court's jurisdiction.
11. Additionally, consolidation would not save time or costs in this instance. Notably, on 12th April, 2024, the court issued a ruling in Petition No. HCCOM 013/2023. Following this, the Applicant sought a stay of execution at the High Court, filed an appeal, and also applied for a stay of the ruling at the Court of Appeal. He has further applied for the recusal of Hon. Lady Justice Njoki Mwangi from the case.
12. Given these developments, consolidation would not expedite the proceedings but rather complicate them, especially considering the Respondent's pending appeals and multiple applications. Moreover, granting consolidation would unfairly benefit the Applicant by undermining a ruling already issued in her favor in HCCOM PET E013/2023. The Applicant's real intention is to sideline that favorable outcome through persistent and vexatious litigation. Granting the application would not serve justice nor promote efficiency.
13. Furthermore, the Applicant approaches the court with unclean hands. This application is a calculated effort to sidestep the court's orders in High Court Petition No. HCCOM 013 of 2023, which directed him to produce the company's records and bank statements from 2020 to date within 60 days from



13th April, 2024. The court also ordered that rental income from properties such as Ngong/Ngong/xxxxx, and proceeds from the company's trucks, be deposited into the company's designated account (Account No. 0730278xxxxxx) pending final determination of the petition. Withdrawals from this account must be mutually agreed upon by both parties.

14. To date she went on, the Applicant has not complied with these orders despite numerous reminders from the Respondent and her counsel. He has failed to present a credible application or demonstrate any prejudice he would suffer if consolidation is denied. In essence, the orders he seeks would allow him to continue infringing on her rights as an equal shareholder of Calikam Company Limited. This application is a thinly veiled attempt to subject her to financial loss and emotional distress by indefinitely suspending her rights as a company director. It is founded on a misinterpretation of the law and does not warrant the reliefs sought.
15. The parties have not filed written submissions.

ANALYSIS AND DETERMINATION

16. I have carefully considered the application and the response thereto as well as the annexures thereto.
17. Although the parties in the two suits are similar, I agree with the Respondent that consolidating the two will not be efficacious for various reasons.
18. First of all, the issue before the commercial division has to do with Calikam Company Limited. This is separate and distinct from the originating summons herein. The same is basically a Cap 486 laws of Kenya issue and not matrimonial issue as it were.
19. It is therefore appropriate that the Commercial Division of this court carries out its adjudication. In any event and based on the Respondent's averments which was not disputed there is a ruling which the said court has made and the Applicant has filed an appeal against it. Even for argument's sake it will be inappropriate for this court to deal with the said suit as it is likely to countermand the decision of a court with same horizontal powers.
20. To be fair therefore the two suits ought to proceed independently. In any case the two former couples will each have their day in the two courts. None will suffer any prejudice.
21. Above all of course is the rending by many courts that in matters company law the question of matrimonial properties cannot be similar to those registered under the party's names. In other words, this court may not have jurisdiction to entertain the same.
22. In *NNN v S M* [2017] eKLR, the court held as follows: 45. In the case of *S.N.K. v M.S.K & 5 others* (2015) eKLR *R.N Nambuye, D.K Musinga and A.K Murgor JJA* held as follows: "We believe that the above issue was exhaustively dealt with by this Court in *Muthembwa v Muthembwa*, Civil Appeal No. 74 of 2001 which was cited in *Mereka v Mereka*, Civil Appeal No. 236 of 2001 where the Court construed the jurisdiction under Section 17 of the MWPA as extending to shares in limited liability companies owned by the parties." The court however held that a trial court in such proceedings had no jurisdiction to distribute properties registered in the name of the company in which the spouses were shareholders. The court held: "if there are disputes between husband and wife as to their respective rights to the shares in a company registered in the name of one spouse, then the court, like in the case of any other property in dispute between husband and wife has power to ascertain the respective beneficial rights of husband and wife to the disputed shares. It can declare, like the learned C.A did in this case, that one spouse holds a certain number of shares in trust for the other spouse. What the court cannot do under Section 17 of the 1882 Act, like in respect of all other properties, is to order the transfer of the legal titles to property or in other words to pass proprietary interest from one spouse to the other." 46.



Shares owned by the Respondent in the company cannot be construed as matrimonial property and be distributed under the principles set out in the Matrimonial Properties Act. The Applicant has not proved that she contributed in monetary or non-monetary ways towards acquisition or development of the property, or that she bought any shares in the company. This court therefore has no jurisdiction to grant the reliefs sought by the Applicant with respect to Plot No. [Particulars Withheld] and the shares in [Particulars Withheld] Limited which manages the hostels in the said Plot. 47. It is trite law that a company is a separate legal person/entity from its shareholders and directors as was espoused in the English case of *Salomon v Salomon* (1887) AC 22. From the foregoing I find that the said Property in L.R No. [Particulars Withheld] managed by [Particulars Withheld] Limited belongs to the company and therefore the Applicant can only make a claim to the company shares under the provisions of the Company Act.”

23. In *Prest v Petrodel Resources Limited & Others* [2013] UKSC 24, the court at paragraph 37 stated,

“... If there is no justification as a matter of general rule principle for piercing the corporate veil, I find it impossible to say that a special and wider principle applies in matrimonial proceedings by virtue of Section 24(1)(a) of the Matrimonial Causes Act 1973. The language of this provision is clear. It empowers the court to order one party to the marriage to transfer to the other “property to which the first – mentioned party is entitled, either in possession or reversion.” An entitlement is a legal right in respect of the property in question. The words “in possession or reversion” show that the right in question is a proprietary right, legal or equitable. This section is involving concepts with an established legal meaning and recognized legal incidents under general law. Courts exercising family jurisdiction do not occupy a desert island in which general legal concepts are suspended or mean something different. If a property exists, it exists in every division of the court and in every jurisdiction of the country courts. If it does not exist, it does not exist anywhere. It is right to add that even where courts exercising family jurisdiction have claimed a wider jurisdiction to pierce the corporate veil than would be recognized under general law, they have not usually suggested that this can be founded on S. 24 of the Matrimonial Causes Act...”

24. Consequently, the application is disallowed with no order as to costs.

DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAIROBI THIS 18TH DAY OF SEPTEMBER 2025.

H K CHEMITEI.

JUDGE

