



**PAO v PO (Matrimonial Cause E007 of 2023)
[2024] KEHC 230 (KLR) (22 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 230 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MATRIMONIAL CAUSE E007 OF 2023
RE ABURILI, J
JANUARY 22, 2024**

BETWEEN

PAO PLAINTIFF

AND

PO DEFENDANT

RULING

1. This suit was filed on 17/7/2023 by the plaintiff herein seeking for division of and or declaration of properties listed in the plaint as matrimonial properties as stipulated under the Matrimonial Properties Act. The applicant/plaintiff quantified what she believes is her share of the listed properties as matrimonial properties. The parties have already complied with pre-trial requirements under Order 11 of the Civil Procedure Rules.
2. The respondent by an application dated December 14, 2023 seeks orders for transfer of this suit from this court to the Chief Magistrate’s Court at Kisumu for hearing and final determination on the grounds that the quantified share of the matrimonial property in question is just 2,834, 670.00 which amount of money is within the pecuniary jurisdiction of the Magistrate’s Court. Further, that Rule 6(1) (b) of the Matrimonial Property Rules, 2020 bestows upon the Magistrates Courts jurisdiction to hear and determine the suit herein.
3. When the matter came up for pre-trial conference on December 18, 2023, Mr. Mbeka, Counsel for the plaintiff informed the court that he had no objection to the application for transfer of the suit to the lower court on pecuniary jurisdiction grounds although he had reservations on the applicable rule which appear to only vest jurisdiction in the magistrates ‘court for enforcement of decree of this court.
4. Both counsel agreed that the court could interpret the Rule 6(1) (b) of the Matrimonial Properties Rules, 2020.



5. The relevant Rules are The *Matrimonial Properties Rules*, 2022 and not 2020 and the said Rule provides as follows, starting from the marginal notes which state as follows: “Court to which application may be made.”

“6.

- (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.”

6. Albeit Mr. Mbeka submitted that he had no objection to the transfer of the suit save for the wordings of the Rule which talk of “enforcement” a reading of the entire Rules and the marginal notes makes it crystal clear that the law envisages an application being made seeking for division of or declaring property to be matrimonial property.

7. Under the Rule 6(a) and (b), where the value of the matrimonial property which is the subject matter of the claim exceeds the pecuniary jurisdiction of a magistrate's court, the application shall be made in the High Court to a magistrate's court having civil jurisdiction to adjudicate matters within the court's pecuniary jurisdiction.

8. My view is that the Rule is so clear that it does not even require any interpretation beyond the language used in the Rule.

9. In this case, the value of the claimed property is quantified to be below Kshs 3,000,000. The jurisdiction of the Chief Magistrate's Court is below twenty million.

10. I find and hold that the Rule gives jurisdiction to the magistrate's court to hear and determine the dispute whose pecuniary value falls within the jurisdiction of the Magistrate's Court, considering that the Act and Rules do not define what “court” is, and the wordings used throughout the other sections and Rules is “a court.”

11. For the above reasons, I find that the application dated December 14, 2023 is merited. I allow it and order that this suit shall forthwith be and is hereby transferred to the Chief Magistrate's Court at Kisumu for hearing and final determination.

12. This file is closed.

13. I so order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 22ND DAY OF JANUARY, 2024

R.E. ABURILI

JUDGE

