



RWN v JNM (Civil Suit E003 of 2022) [2024] KEHC 3675 (KLR) (3 April 2024) (Ruling)

Neutral citation: [2024] KEHC 3675 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CIVIL SUIT E003 OF 2022**

J WAKIAGA, J

APRIL 3, 2024

BETWEEN

RWN APPLICANT

AND

JNM RESPONDENT

RULING

1. By an Originating Summons dated 10th March 2022 the Applicant moved the Court, seeking declaration that all the property listed therein and registered in the name of the Respondent were owned jointly by the Applicant and the Respondent and that an order do issue declaring that 50% or such other or higher proportion of the properties is held by the Respondent in trust and for the benefit of the Respondent.
2. The Applicant further sought an order declaring that the Respondent is accountable to the Applicant in respect of all the income derived from the said properties and applied to the Respondent's exclusive use. She further sought for restraining Orders until the final determination of the cause.
3. The Respondent filed a replying affidavit to the application in which he contended that the Applicant did not contribute towards the acquisition of the subject property having stated that she was a pauper and a poor person without any means.
4. On the 15th May 2023, the Respondent herein took out a Preliminary Objection dated 20th April 2023, the subject matter of this Ruling on the grounds that the Court did not have jurisdiction to entertain the matter which was founded by the Court order given on 27th February 2002 and issued on 24th September 2002 in Kigumo RMC No 24 of 1998 the same being barred by section 4(4) of the *Limitation of Actions Act*.
5. It was contended that the suit was time barred as 12 years had lapsed since the properties in dispute were acquired by the Respondent and that the Applicant had no claim against the properties acquired after the divorce was granted on 27th February 2002.



6. The Applicant filed grounds of opposition to the objection and stated that the matrimonial proceedings were founded and governed by matrimonial properties Act and Rules 2022 and that the properties acquired in 1999 were acquired during the subsistence of the marriage and formed the basis of the proceedings.
7. Directions were issued that the P.O to be determined first as it went to the root of the matter by way of written submissions and on behalf of the Respondent it was submitted that the cause of action accrued from the date of the dissolution of the marriage on 27th February 2002 and that the suit herein was geared toward execution of the said Court Order which should have been done within six years in the case of movable property and twelve years in case of immovable property as provided for under sections 4(1) (e) and 4(4) of the *Limitation of Actions Act* as read with Section 7 thereof.
8. It was contended that it was over twenty years since the marriage was dissolved and when the cause of action accrued and that *Limitation Of Actions Act* covers execution of judgements as was stated in the case of *Wills Onditi Odhiambo v Gateway Insurance Co Ltd* [2014] eKLR where the Court stated that an action may not be brought upon a Judgement after twelve years from the date of the delivery and in *Mikiara Mrikiara & another v Gilbert Kabeere Mmbijiwe* [2007] eKLR the Court stated that a Judgement for possession of land should be enforced before the expiry of the 12 years.
9. On behalf of the Applicant it was submitted that Section 4(4) of the *Limitation of Actions Act* did not apply to the commencement of proceedings under *Matrimonial Property Act* which is provided for under Section 17 thereof and rule 5(2) which provides that the same should be commenced within 12 months from the date of the decree absolute in respect of divorce under the *Marriage Act* 2014. It was contended that the fact that parties are divorced was only a condition precedent for filing causes under the Matrimonial Properties Act and that then Court can extend time for filing the same.

DETERMINATION

10. The issue before the Court for determination is whether the Preliminary Objection herein as filed qualify as a Preliminary Objection and whether the same has merit? What constitute a Preliminary Objection is now well settled in the Kenyan jurisdiction from the case of *Mukisa Biscuit Manufacturing Co Ltd v West End Distributors Ltd* to wit a purely point of law from the pleadings which may dispose of the suit.
11. In this cause, the Respondent has raised two issues, one being of jurisdiction and limitation of actions, which in may opinion may go to the root of the matters herein as should the Court find that the suit is statutory barred by way of limitation, then that would go to the jurisdiction of the Court as was stated in the case of *Bosire Ogero v Royal Media* [2015]e KLR where the Court held that even if the issue of limitation which is intended to protect the Defendant from stale claims is not raised by a party , the Court cannot entertain a suit which it has no jurisdiction over .
12. It is trite law that the issue of limitation goes to the jurisdiction and I therefore find and hold that the Preliminary Objection herein is properly raised as it is a pure point of law which is likely to determine the outcome of the proceeding herein.
13. On the merit thereof, it is not disputed that the marriage giving rise to the cause herein was dissolved on the 27th of September 2002 and the suit was filed twenty years thereafter as submitted by the Respondent and not disputed by the Applicant. The issue for the Court to determine, is when was the Applicant expected to file for her claim under the *Matrimonial Property Act* and whether the Provisions of the *Limitation of actions Act* are applicable to the issues herein.



14. From the material placed before the Court it is clear that the divorce herein was granted before the Matrimonial Property Act of 2014 was enacted and therefore the issue for the Court's determination is whether the provisions thereof applies to the present proceedings.
15. Contrary to the Respondents contention, Matrimonial Property Act is a stand-alone Act which provides for how the claims therein are to be instituted and is therefore not an enforcement of the Decree issued in the divorce proceedings and as such the Provisions of Sections 4 and 7 of the Limitation of Actions Act are not applicable to the proceedings herein as section 5(2) of the Matrimonial Property Act specifically provides for the period within which claims under the act may be lodged, which is within twelve months from the date on which the decree absolute is issued unless extended by the Court under rule 5(3) as read with rule 18.
16. As stated herein, whereas the cause is filed after the enactment of Matrimonial Property Act 2014 which provides for institution of claim within 12 months, the divorce herein was granted before the enactment of the said Act and the applicable law should have been the *Married Women Property Act* of 1882 and should have been filed in compliance with section 17 thereof which was repealed by the Act in Section 19.
17. It therefore follows that the Applicant's claim herein should have been filed within a period of 12 months from the date of decree absolute and having been filed without the said period of time and without leave of the Court and or extension thereof, it follows that the suit is time barred and the Preliminary Objection herein has merit and succeeds and is allowed and the cause is dismissed.
18. This being a family dispute each party shall bear their own cost and it is ordered.

DATED SIGNED AND DELIVERED AT MURANGA THIS 3RD DAY OF APRIL 2024

J. WAKIAGA

JUDGE

In the presence of:

Mr. Ndungu for the Applicant

No appearance by Mr. Mugo for the Respondent

No appearance by the parties.

Quinteen – Court Assistant

TABLE

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