



**Cheruiyot v Wambilyanga (Matrimonial Case E003 of 2024)  
[2024] KEHC 12187 (KLR) (3 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12187 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
MATRIMONIAL CASE E003 OF 2024**

**G MUTAI, J**

**OCTOBER 3, 2024**

**BETWEEN**

**LORA CHELANGAT CHERUIYOT ..... CLAIMANT**

**AND**

**STEPHEN KHISA WAMBILYANGA ..... RESPONDENT**

**RULING**

1. The Claimant married the Respondent on 20<sup>th</sup> November 2010 at Bungoma Catholic parish in the Bungoma South District. Their marriage was dissolved by the Divorce Court at Mombasa on 23<sup>rd</sup> March 2023. The Court issued the Certificate of Making Decree Nisi Absolute on 2<sup>nd</sup> May 2023.
2. During coverture, the Claimant and the Respondent acquired Title Number E. Bukusu/S. Kanduyi/17749 measuring 0.110 Ha. A Title deed bearing the names of the Claimant, Lora Chelangat Cheruiyot, and the Respondent, Stephen Khisa Wambilyanga, was issued on 6 October 2014. On 29 January 2015, a charge to secure advances made by the Barclays Bank of Kenya Ltd to the Claimant, in the sum of Kes.5,500,000.00, was registered.
3. The said property is situated in Bungoma. The Claimant took a loan to Construct the matrimonial home. The Claimant avers that she was forced to move out of the matrimonial home when the marriage broke down. The Respondent remained in occupation.
4. The Claimant thus sought, among other things, declaratory reliefs, valuation of the property, sale, and division of the proceeds thereof.
5. The Respondent entered appearance and filed a Notice of Preliminary Objection on 19<sup>th</sup> June 2024. I shall reproduce the three grounds of objection below:-
  1. The Claimant having being aware that the land the property being Plot No. E. Bukusu/S. Kanduyi/17749, which is the subject matter of this dispute, is situated in Bungoma County;



this honourable court lacks jurisdiction to hear and determine this matter due to territorial jurisdiction variance;

2. To hear and determine this matter will be contrary to section 12 of the [Civil Procedure Act](#), Cap 21, which directly bars this honourable court from entertaining such suits;
  3. This honourable Court lacks jurisdiction to hear the matter as filed where the Claimant in her pleadings has sought to file the matter in Mombasa whereas the Respondent is based in Nairobi and the property of the subject of this dispute is located in Bungoma County.
6. As the jurisdiction of the Court was denied by the Respondent, the Court ordered that the issue of jurisdiction be determined first. In the case of [Owners of the Motor Vessel "Lillian S" v Caltex Oil \(Kenya\) Ltd](#) [1989] eKLR, the Court of Appeal (per Nyarangi J) held as follows:-

“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

7. It was thus necessary to determine whether this Court should down its tools.
8. Parties filed Written Submissions, which I shall refer to below.
9. The Respondent’s written submissions are dated 18 July 2024. It was submitted that although the claim was filed in Mombasa, the subject property disclosed by the Originating Summons is Title Number E. Bukusu/ Kanduyi/17749, situated more than 400 kilometres away from Mombasa.
10. The Respondent identified four issues, to wit:-
  1. Whether or not the Claimant is properly before this honourable court;
  2. Whether or not this honourable Court is clothed with necessary jurisdiction to handle the matter the subject of this dispute to its just conclusion;
  3. What remedies or reliefs should this honourable Court award; and
  4. Who should be condemned to pay the costs of the suit?
11. On the first issue, it was stated that the suit property is in Bungoma. On whether this Court has jurisdiction, it was urged that it doesn’t. Reliance was placed on the case of [Zipporah Njoki Kangara v Rock and Pure Ltd & 3 others](#)[2021]eKLR, where the Court stated:-

“As regards the issue of territorial jurisdiction, I find that the provisions of section 13 of the [Civil Procedure Act](#) cannot oust the jurisdiction of this Court as vested by Article 162(2) (a) of the [Constitution](#).”

This decision does not support the objection.

12. Reliance was also placed on the case [Mary Musuki Mudachi & another v Anthony Muteke Mudachi & 2 others; Elijah K Kimanzi & 6 others](#) (interested parties)[2021]eKLR.
13. Counsel for the Respondent thus sought to have the suit dismissed.



14. The Claimant opposed the Preliminary Objection. The submissions of the Claimant are dated 17<sup>th</sup> July 2024. The Claimant identified three issues to wit:-
1. Whether the grounds set out in the Preliminary Objection are points of law;
  2. Whether this honourable Court lacks jurisdiction; and
  3. Whether the objection raised by the Respondent is merited.
15. The Claimant submitted that the Preliminary Objection raised herein does not meet the test set out by the Court of Appeal for Eastern Africa in the case of *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* (1969) EA 696 as it requires facts to be ascertained. Learned counsel for the Claimant averred that whereas the property, the subject matter of the suit, is in Bungoma, the divorce case between the parties hereto was filed in Mombasa. It was urged that there would be a need to ascertain facts in issue, and as such, the preliminary objection did not raise pure points of law.
16. On whether the Court has jurisdiction, learned counsel referred the Court to Article 165(3) (a) of the Constitution and Rule 6(1)(a) of the Matrimonial Properties Rules for the proposition that the High Court has the unlimited original and Civil and Criminal matters. The Court was referred to the decision of the High Court in DOK v JEN alias JEK [2016]eKLR, where the Court held that:-
- “Would the transfer of this suit ensure a just expeditious and proportionate resolution of the same? The Applicant’s age is given as 49 and is apparently in good health, while the Respondent is 68 years old and in poor health. The issue of affordability notwithstanding, the overriding principle would not be met by compelling the Respondent to travel to Kisumu for the hearing of the case. Indeed, it may be more costly for the Respondent, given his health condition, to travel to Kisumu”.
17. Counsel for the Claimant also referred me to my decision in WAH v JWH (Misc. Cause No E046 of 2022) [2023]KEHC 20/21 (KLR) ( 14 July 2023) wherein I stated:-
- “28. Rule 6 is not couched in mandatory terms and only touches on pecuniary jurisdiction. Initially, matters were filed in the High Court. the Constitution being the Supreme law of the land, it is my finding that this Court has jurisdiction to hear and determine this matter and may do so where it is just and expedient.”
18. It was urged that the Respondent was in an expedition to deny the Claimant her right to access justice as neither the Respondent nor the Claimant reside in Bungoma. Thus, I was urged to dismiss the Preliminary Objection with costs to the Claimant.
19. In my view, the sole issue is whether the High Court has jurisdiction to hear and determine the matter.
20. It is common ground that the parties got married in Bungoma and that the matrimonial home is in Bungoma. Jurisdiction is, in my view, a pure point of law. I, therefore, find and hold that the preliminary objection was rightly taken.
21. the Constitution of Kenya, 2010, creates the High Court. Article 165(3) states that:-
- “(3) Subject to clause (5), the High Court shall have—
- (a) unlimited original jurisdiction in criminal and civil matters;”



22. the *Constitution* is the supreme law of the land. It is evident that the jurisdiction of the High Court in Civil matters is “unlimited”. My understanding of the word “unlimited” in respect of the High Court’s civil jurisdiction is that it can hear any civil matter arising anywhere in Kenya, except for those reserved for equal-status courts by Article 162(2) of the *Constitution*. the *Constitution*, therefore, does not limit this Court’s territorial jurisdiction.
23. In the circumstances, I agree with the court’s decision in *Zipporah Njoki Kangara v Rock and Pure Ltd & 3 others* [2021] eKLR.
24. In my view, section 12 of the *Civil Procedure Act* does not oust my jurisdiction. Since the property is in Kenya, and as I can hear and determine any civil matter within the boundaries of Kenya, a property in Bungoma is within my jurisdiction.
25. That said, the mere fact that I have jurisdiction does not mean that I should necessarily hear this matter or that it is prudent use of the scarce judicial resources to do so. The High Court has court stations throughout the country so that Kenyans can access justice with ease, with little inconvenience, promptly, and at an affordable cost.
26. In my decision in *WAH v JWH* (supra), I adverted to the issue of convenience and expedience when I stated that: -
- “it is my finding that this Court has jurisdiction to hear and determine the matter and may do so where it is just and expedient.” (emphasis added).
27. In the circumstances, I find no merit in the Preliminary Objection. The same is for dismissal.
28. The above decision notwithstanding, I am nevertheless puzzled by the choice of the Mombasa High Court as the station in which the Originating Summons was filed. As I have already adverted to, the cause of action is a property situated in Bungoma. No explanation has been given for the choice of the Mombasa High Court. The demand letter to the Respondent gives his address as P.O. Box 174 Bungoma. The same address is used in the Originating Summons as his address of service. The statement of Account attached to the Originating Summons gives the Claimant’s address as P.O. Box 62 Kitale. The parties and the subject matter of the claim appear to have more connection with Bungoma/Western Kenya than they do with Mombasa. Hearing of this case in Mombasa, rather than Bungoma, creates a small but nevertheless significant hurdle for him.
29. As far as possible, and unless significant hardship will be suffered by the Claimants/Plaintiffs/Applicants, cases ought to be instituted in the High Court closest to where the subject matter is or where the Defendant/Respondent resides. Such a practice would minimize needless forum shopping and is good for the administration of justice.
30. It would be more prudent to transfer this cause to Bungoma for hearing and determination.
31. Accordingly, this Court, of its own motion, hereby orders the transfer of this matter to Bungoma High Court for hearing and determination.
32. The orders that commend themselves to me therefore are that
1. The Preliminary Objection dated 20<sup>th</sup> June 2024 is dismissed; and
  2. In the interest of justice and quick determination of this matter, I order that the suit be transferred to the Bungoma High Court for hearing and determination.
33. Parties will bear their costs.



34. Orders accordingly.

**DATED AND SIGNED AT MOMBASA THIS 3<sup>RD</sup> DAY OF OCTOBER 2024. DELIVERED  
VIRTUALLY THROUGH MICROSOFT TEAMS**

**GREGORY MUTAI**

**JUDGE**

In the presence of: -

Mr Wambilyanga, for the Respondent;

Mr Khadija, holding brief for Mr Obonyo, for the Claimant; and

Arthur - Court Assistant.

