



**KWN v WNK (Civil Suit E001 of 2022)  
[2023] KEHC 18201 (KLR) (Family) (23 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 18201 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
CIVIL SUIT E001 OF 2022  
EKO OGOLA, J  
MAY 23, 2023**

**BETWEEN**

**KWN ..... APPLICANT**

**AND**

**WNK ..... RESPONDENT**

**RULING**

1. What is before this court for ruling is an originating summons dated January 7, 2022. The Applicant prays for the following orders:-
  - a. Spent
  - b. That in the interim, this honorable court be and is hereby pleased to issue an order restraining the respondent whether by himself, his agent, servants and/or employees or otherwise howsoever from alienating, disposing, selling, encumbering, assigning, transferring or in any other like manner dealing with Land Parcel No. Dagoretti/Kinoo/T.281
  - c. That in the interim the honorable court be and is hereby pleased to preserve Land parcel No. Dagoretti/Kinoo/T.281
  - d. That this court issues an order declaring that the applicant has equal beneficial interest in the properties, and proceeds from Land parcel No. Dagoretti/Kinoo/T.281
  - e. That this honorable court be pleased to declare that the Applicant is entitled to the property on the basis of both financial and non-financial contribution towards its acquisition



- f. That the honourable court be and is hereby pleased to issue an order compelling the respondent to submit any document pertaining to Land parcel No. Dagoretti/Kinoo/T.281 for purposes of clarification and transparency.
  - g. That this honorable court be pleased to grant such other orders as relief as may be just and fit in the circumstances.
  - h. That the respondent be ordered to pay the costs.
2. The summons are based on the grounds set out therein and the applicant's supporting affidavit sworn on the same date. The parties got married on March 2, 1968. The marriage was dissolved on August 24, 1995. It is the Applicant's case that during the subsistence of the marriage, they acquired matrimonial properties through joint efforts and contributions directly or otherwise. One of the properties is Land parcel No. Dagoretti/Kinoo/T.281. The Applicant avers that the respondent is in possession of the documents pertaining to the aforesaid property and hence, she is fearful that the respondent could dispose of the property. The applicant states that she is in occupation of the property, and if the respondent has already sold it, then she will be at risk of eviction. The applicant further contends that she is entitled to the property in the percentage of her contribution.
3. In response, the respondent filed his replying affidavit dated March 24, 2022. He deposed that indeed he was married to the applicant and the marriage was dissolved on August 24, 1995. The respondent further deposed that he is the registered owner of the said property having purchased it on August 11, 1968. He deposed that at the time of purchase, he was working as the personnel officer Kabete Vet Lab whilst the applicant was not working. According to him, the applicant did not contribute to the purchase of the property. The respondent averred that after the applicant deserted him, which was the ground for the divorce, he found out that the applicant had relocated to the United States of America, therefore, the property cannot be said to be matrimonial property. He deposed that he disposed of the property which is now registered to a third party, therefore, the orders sought cannot be granted. Further, the applicant has not provided proof that she contributed towards the purchase and or development of the suit property.
4. According to the respondent, the Summons have been filed too late and has been caught by the Limitation of Actions Act. The respondent further filed a notice of preliminary objection dated March 24, 2022 stating that the originating summons is time-barred.

### **Determination**

5. I have considered the originating summons and affidavits of the parties. Before analyzing the merits of the originating summons, I must first address the respondent's preliminary objection regarding the limitation of time. The issue of limitation goes to the jurisdiction and once a matter is statute-barred, the court has no jurisdiction to entertain it. Section 7 of the Limitation of Actions Act stipulates as follows:-

“An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.”
6. The applicant's right to the suit property if any accrued when the marriage was dissolved on August 24, 1995. It is now about 28 years since the right to bring an action to distribute matrimonial property arose. The applicant needed to commence her claim for the division of the matrimonial property



within the time prescribed under section 7 aforementioned. It follows therefore that by the time the applicant filed the Summons, the claim was statute barred.

7. In the case of *Bosire Ongero vs Royal Media Services* [2015] eKLR the court held that the issue of limitation goes to the jurisdiction of the court to entertain claims and therefore if a matter is statute barred the court has no jurisdiction to entertain the same.
8. I have considered the foregoing and I find that limitation being a substantive law, the provisions of section 1A and 1B of the *Civil Procedure Act* cannot be invoked with a view to disregard the provisions of another Act of Parliament. Even if the Limitation of Act was procedural legislation, section 3 of the *Civil Procedure Act* provides:

“In the absence of any specific provision to the contrary, nothing in this Act shall limit or otherwise affect any special jurisdiction or power conferred, or any special form or procedure prescribed, by or under any other law for the time being in force.”
9. The locus classicus on jurisdiction is the celebrated case of *Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd* [1989] KLR 1 where Justice Nyarangi of the Court of Appeal 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 downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”
10. Clearly, this court lacks jurisdiction and the matter is at its end. I will have to down my tools and take no further steps. The preliminary objection herein succeeds in its entirety with the result that the applicant’s originating summons is herein struck out with costs to the respondent.

It is so ordered.

**DATED and DELIVERED at NAIROBI this 23<sup>rd</sup> day of May 2023**

**E.K. OGOLA**

**JUDGE**

In the presence of:

Mr. Omwoyo for the Applicant

Mr. Gachuhi for the Respondent

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