



**EMD v DK (Originating Summons E020 of 2023)  
[2023] KEHC 20237 (KLR) (Civ) (22 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 20237 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**ORIGINATING SUMMONS E020 OF 2023**

**PM NYAUNDI, J**

**JUNE 22, 2023**

**BETWEEN**

**EMD ..... APPLICANT**

**AND**

**DK ..... RESPONDENT**

**RULING**

1. Vide Notice of Preliminary Objection dated April 3, 2023 the Defendant raises an objection to the Applicant’s entire Application and cites the following grounds of law;
  1. The Parties to the Application are resident of Kitui County.
  2. The Properties over which the application relates are all situated at Mwingi, Kitui County.
  3. The divorce cause between the parties was heard and concluded at the subordinate Court at Mwingi, Kitui County.
  4. There is a High Court at Kitui which is competent to hear and determine the Application.
  5. The filing of the Application at Nairobi to forum shopping ( sic)that unnecessarily increases the costs of the suit to the parties and is contrary to the provisions of Section 3B ( sic), 12 and 15 of the Civil Procedure Act, Cap21 Laws of Kenya.
2. The Applicant does not however state the orders that he seeks having raised the preliminary objection.
3. The Preliminary objection is opposed by the Respondent vide Replying Affidavit sworn on April 20, 2023 and written submissions of even date.



4. This is a straight forward matter as the Applicant challenges the filing of the Originating Summons in the High Court at Nairobi, when there is a court of competent jurisdiction in Kitui and the filing in Nairobi will visit extra expenses on the Applicant.
5. The Respondent opposes the preliminary objection and argues that it does not meet the threshold laid down in the *Mukisa Biscuit Manufacturing Co Ltd vs Westend Distributors Ltd*[1969] EA 696 on principles to guide courts in determining the merits or other wise of a preliminary objection.
6. Secondly whilst admitting that jurisdiction is everything as enunciated in the locus classicus case of *Owners of the Motor Vessel 'Lillian S' V Caltex Oil (Kenya) Ltd [1989] eKLR* the Respondent seeks to distinguish the instant matter and argues that the Court does have jurisdiction.
7. The decision in the Owners of the Motor Vessel Lillian S was cited with approval in *Public Service Commission & 4 others v Cheruiyot & 20 others (Civil Appeal 119 & 139 of 2017 (Consolidated)) [2022] KECA 15 (KLR)* (8 February 2022) (Judgment) where the court held  
[36.] Jurisdiction is everything, it is what gives a court or a tribunal the power, authority and legitimacy to entertain a matter before it. John Beecroft Saunders in *Words and Phrases legally defined, Volume 3* at page 113 defines Court jurisdiction as follows:  
  
By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or to take cognizance of the matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted, and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to kind and nature of the actions and matters of which the particular court has cognizance, or as to the area over which the jurisdiction shall extend, or it may partake of both characteristics.
8. The High Court is established under Article 165 (1) of the *Constitution* of Kenya 2010. Article 165 (3) provides that it shall have, inter alia
  - a. Unlimited original jurisdiction in criminal and civil matters;
9. I shall not belabor the point as it is evident that the High Court has unlimited jurisdiction.
10. For this reason, I proceed to dismiss the Preliminary Objection as lacking merit with costs to the Respondent.

**It is so ordered**

**SIGNED DATED AND DELIVERED IN VIRTUAL COURT**

**THIS 22<sup>nd</sup> DAY OF JUNE, 2023.**

**P M NYAUNDI**

**HIGH COURT JUDGE**

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***Ruling***

***OS No. E020 OF 2023***

