



BWM v MW & another (Environment and Land Appeal E042 of 2024) [2025] KEELC 3909 (KLR) (8 May 2025) (Ruling)

Neutral citation: [2025] KEELC 3909 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT AND LAND APPEAL E042 OF 2024**

**AK BOR, J
MAY 8, 2025**

BETWEEN

BWM APPELLANT

AND

MW 1ST RESPONDENT

SKK 2ND RESPONDENT

RULING

1. This appeal was lodged against the decision of the Chief Magistrate at Embu delivered in Embu CMELC Case No. EXX of 2022 on 29/8/2024. What is at the heart of this appeal is the land known as Ngandori/Kiriari/XXXX(the suit land) and whether it constitutes matrimonial property. One of the grounds of appeal set out in the Memorandum of Appeal is that the trial court erred when it found that there was a valid marriage between the 1st and 2nd Respondents. The Appellant faults the learned magistrate for failing to find that the 2nd Respondent acknowledged that she was his wife and for finding that she forced herself on the 2nd Respondent.
2. Looking at the submissions filed by the Appellant and the 1st Respondent, it is apparent that this is a matrimonial dispute. The 1st Respondent filed suit claiming that the suit land which she acquired with the 2nd Respondent during their marriage was unlawfully transferred and registered in the names of her husband and the Appellant. She claimed that they bought the suit land during their marriage in 1989 and it was registered in the 2nd Respondent’s name.
3. When she learned in 2021 that the 2nd Respondent had transferred the suit land to his name and that of the Appellant without her knowledge and consent, she filed Embu CM ELC No. XX of 2023 seeking to have the suit land declared as matrimonial property and cancellation of the transfer of the suit land to the Appellant. The trial court entered judgment in favour of the 1st Respondent. Being aggrieved



by that decision, the Appellant who claims to be the 2nd Respondent's wife, filed this appeal. The 2nd Respondent did not participate in these proceedings.

4. Based on the pleadings and impugned decision of the trial court, it is apparent that this is a matrimonial dispute which falls outside the jurisdiction of this court.

The appeal is transferred to the High Court for hearing and disposal.

DELIVERED VIRTUALLY AT EMBU THIS 8TH DAY OF MAY 2025.

K. BOR

JUDGE

In the presence of: -

Mr. Timothy Njenga for the Appellant

Ms. Cynthia Wanjiku for the 1st Respondent

Diana Kemboi- Court Assistant

No appearance for the 2nd Respondent

