



**MWK v BMO (Miscellaneous Civil Application E106 of 2023)
[2023] KEHC 23299 (KLR) (6 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 23299 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
MISCELLANEOUS CIVIL APPLICATION E106 OF 2023**

A MSHILA, J

OCTOBER 6, 2023

BETWEEN

MWK APPELLANT

AND

BMO RESPONDENT

RULING

1. Before court is an application by way of Notice of Motion dated March 27, 2023 and brought under Sections 79G and 95 of the Civil Procedure Act and Order 50 Rule 5 and 51 Rule 1 of the Civil Procedure Rules and all other enabling provisions of the law. The Appellant sought for an order that the Appellant be granted leave to file and prosecute her appeal being the appeal in this instant matter, out of time against the decision of the Hon CA Otieno Omondi (SPM) in Ruiru Magistrate’s Court issued on the 23rd day of November, 2022 in Ruiru MCDC NO E062 of 2022.
2. The application is based on the grounds that the Appellant is aggrieved by the decision of the court made on November 23, 2022 holding that the court lacks jurisdiction. That due to unavoidable circumstances the Appellant was unable to file the appeal on time.
3. MWK swore the supporting affidavit herein. She deposed that she contracted a civil marriage with the Respondent at the Registrar’s office in Nairobi but the same came to an end in 2017 when she moved to Ruiru where she has been living for over four years. That she filed a divorce cause in the Senior Principal Magistrate’s Court at Ruiru. That on November 23, 2022 when the matter was coming up for hearing the trial court cited lack of jurisdiction as the matter was celebrated in Nairobi and the parties moved to Syokimau as such jurisdiction was said to be either Nairobi or Mavoko. She stated that her advocates were closing for the holidays as such time stopped running when the offices were closed. That upon return they tried to file their Memorandum of Appeal in vain as time had run out as such they were directed to file the instant application. It was stated that the Respondent would not suffer any prejudice and that the appeal is arguable.



4. No response and/or submissions were filed by the Respondent in respect of this application.

Issues For Determination.

5. Having considered the Appellant's application, the main issue arising for determination is whether leave should be granted to file the intended appeal and whether the lower court has jurisdiction to hear and determine the divorce cause filed therein.

Analysis

6. The Appellant herein seeks to appeal against the decision of the Hon CA Otieno Omondi (SPM) in Ruiru Magistrate's Court issued on November 23, 2022 in Ruiru MCDC No E062 of 2022 when the lower court issued directions that she had no jurisdiction to hear the matter for the reason that the marriage was celebrated in Nairobi and the parties thereafter, went to live in Syokimau thereby inferring that the jurisdiction of the matter was either a court in Nairobi or Mavoko.
7. The divorce cause was coming up for hearing on November 23, 2022 when the trial court downed its tools as it lacked jurisdiction.
8. In the Court of Appeal case of *Peter Gichuki King'ara v Independent Electoral And Boundaries Commission & 2 others (2013) eKLR* the court therein was mindful of the case of Lillian 'S' (1989) KLR 1 in which this Court succinctly set out the principles and context for determination of jurisdiction. Nyarangi, JA stated, inter alia:-

' Jurisdiction is everything. Without it, a court has no power to make one more step. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.'

9. The marriage between the parties was indeed celebrated in Nairobi. Thereafter, the parties herein lived in Syokimau as such the proper court with jurisdiction to hear and determine the divorce cause is either the court in Nairobi or Mavoko as rightly held by the lower court.
10. Refer to the case of *MNM v PNM (2016) eKLR* where Musyoka J had this to say:-

' In personal matters, such as marriage, domicile is critical. Domicile is all about residency. The law of domicile plays an important role in the determination of whether or not the court to which a dispute has been presented has jurisdiction. Crucially, the court will only have jurisdiction over a suit for dissolution of marriage where the parties have been domiciled within the jurisdiction of that court for the period allowed by the relevant law.'

11. In the circumstances and bearing in mind of the above persuasive authority, this court is satisfied that the lower court correctly applied the principles of law in issuing directions that the lower court lacked jurisdiction.
12. The Appellant herein should instead have filed a miscellaneous application requesting the High Court to transfer the divorce cause to a court with competent jurisdiction instead of filing an intended appeal.

Finding And Determinations

13. For the forgoing reasons this court finds that the application for enlargement of time is devoid of merit and the same is hereby dismissed with no order as to costs. The applicant at liberty to file an application for transfer of the Lower court file.



Orders Accordingly.

DATED SIGNED AND DELIVERED AT KIAMBU VIA TEAMS THIS 6TH DAY OF OCTOBER, 2023.

A. MSHILA

JUDGE

In the presence of ;

Mourice – Court Assistant

Wambui – h/b for Mwangi for the Applicant

