



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**FAMILY DIVISION**

**CIVIL SUIT NO. 44 OF 2016**

**SWG.....APPLICANT**

**VERSUS**

**ACWM.....RESPONDENT**

**RULING**

1. This ruling relates to the Preliminary Objection raised by the respondent's counsel; wherein she has urged that the court lacks jurisdiction; the application is bad in law, frivolous, vexatious and ought to be struck out with costs.
2. The applicant moved this court by way of an Originating Summons *inter alia* pursuant to **Section 2 of the Marriage Act 2014, Sections 2, 7, 12 (3) and 14 of the Matrimonial Property Act 2004**, seeking distribution of Matrimonial Property acquired between him and the respondent during cohabitation.
3. The suit was followed with an application dated 20<sup>th</sup> December 2016 where the Plaintiff sought to have access to the matrimonial home for purposes of obtaining his personal effects.
4. Currently the applicant is acting in person and the court in the interest of justice and fair play, on the 31<sup>st</sup> January, 2019 decided to pend the matter for 6 months to allow him file a divorce cause in the Chief Magistrate's court in view of the objection raised. That was the last time the applicant appeared before court despite several notices for mention of the matter post the 6 months and as a result of the absence the respondent's counsel sought to proceed with the Preliminary Objection.
5. On the 23<sup>rd</sup> of January 2020, the court being satisfied that a hearing notice had been duly served allowed the hearing of the Preliminary Objection the applicant's absence notwithstanding.
6. Counsel for the respondent urged that the suit ought to be dismissed as the court lacks jurisdiction since the parties had not been married, and though there is a claim of cohabitation no prove of such has been placed before court even then, no proof of dissolution of the said marriage was placed before court either and therefore the suit being bad in law.
7. As has been held by court's severally jurisdiction of a court is everything, without it the court must down its tools.
8. A marriage or a union has to be proved in evidence by way of documentation or where necessary a court makes a declaration based on evidence before it.
9. **Section 7 of the Matrimonial Causes Act, 2013** specifies when a court has jurisdiction as follows:  
  
**"Subject to subsection 6(3), ownership of matrimonial property vests in the spouses according to the contribution of either spouse towards its acquisition, and shall be divided between the spouses if they divorce or their marriage is otherwise dissolved."**
10. In this instance the applicant claimed to have been married to the respondent which she denied. He was given an opportunity to file suit in the Chief Magistrate's Court for determination as to whether there ever existed a union by way of cohabitation, and for its dissolution to pave way for this court to act, this was not done.
11. By law, as it is now; this court has no jurisdiction and therefore the Preliminary Objection is upheld and the suit struck off.

12. Costs to the respondent.

**DATED and DELIVERED at NAIROBI on this 11<sup>TH</sup> day of JUNE, 2020.**

**ALI-ARONI**

**JUDGE**