



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**FAMILY DIVISION**  
**HIGH COURT CIVIL SUIT NO. 30 OF 2016 (O.S.)**  
**IN THE MATTER OF MATRIMONIAL PROPERTY ACT,2013**  
**GMN.....PLAINTIFF/APPLICANT**  
**VERSUS**  
**JWM.....DEFENDANT/RESPONDENT**  
**RULING**

1. The Applicant GMN filed the Originating Summons dated 8.7.2016 seeking the following prayers;

**(i) THAT this Honourable Court does order that the Property known as NGONG/NGONG/[.....] and now sub-divided into LAND PARCEL NOS. NGONG NGONG/[.....] & [.....] be declared matrimonial property.**

**(ii) THAT this Honourable Court does order that the Property known as NGONG/NGONG/[.....] and now sub-divided into LAND PARCEL NOS. NGONG NGONG/[.....] & [.....] be jointly registered in the names of GMN and JWM to hold in trust of their children.**

**(iii) THAT this Honourable Court do issue an order restraining the Defendant from evicting the Plaintiff and her/their children from the matrimonial home namely NGONG/NGONG/[.....] and now sub-divided into LAND PARCEL NOS. NGONG/NGONG [.....] & [.....].**

**(iv) The costs of this suit be awarded to the Plaintiff.**

2. The Respondent in his reply has denied that he ever married the Applicant herein.

3. **Section 17** of the **Matrimonial Property Act** provides as follows;

**Action for declaration of rights to property**

***(1) A person may apply to a court for a declaration of rights to any property that is contested between that person and a spouse or a former spouse of the person.***

***(2) An application under subsection (1)—***

***(a) shall be made in accordance with such procedure as may be prescribed;***

***(b) may be made as part of a petition in a matrimonial cause; and***

***(c) may be made notwithstanding that a petition has not been filed under any law relating to matrimonial causes.***

4. This Court has jurisdiction under **Section 17** of the **Matrimonial Property Act** to declare that the suit properties are Matrimonial Property and to preserve the same if there is evidence that the said properties were acquired during the subsistence of the marriage.

5. The party alleging marriage must prove the existence of the alleged marriage and also that the said properties were acquired by the parties during the subsistence of the said marriage

6. However, the said property can only be distributed in accordance with **Section 7 of Matrimonial Property** if the parties are divorced or if the marriage is dissolved.

7. **Section 7 of Matrimonial Property** Act provides as follows;

**Ownership of matrimonial property**

*Subject to section 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.*

8. The Court with the Jurisdiction to hear Divorce causes in the Magistrate's Court since the enactment of the Marriage Act 2014.

9. The issue of jurisdiction is premised on the following case;

**OWNERS OF THE MOTOR VESSEL "LILLIAN S" vs. CALTEX OIL (KENYA) LTD [1989] KLR 1** which provides that:

*"...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. In the current case, I find that the Court can only preserve the properties pending divorce proceedings by the parties. See the case of **M.M.M. v W.N. K. (2019)Eklr** where the court stated that It had jurisdiction to determine and preserve suit properties.

11. I direct that the hearing of this case proceeds by way of viva voce evidence only for purposes of establishing whether or not the said properties are matrimonial property.

**DELIVERED, SIGNED AND DATED IN OPEN COURT THIS 12<sup>TH</sup> DAY OF JULY, 2019**

**ASENATH ONGERI**

**JUDGE OF THE HIGH COURT OF KENYA, NAIROBI.**