



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CIVIL CASE NO. 136 OF 2010 (OS)

E N M PLAINTIFF

Versus

J M M 1ST DEFENDANT

C K M 2ND DEFENDANT

RULING

Jurisdiction of the Court

[1] On 1st March 2018, the court noted that the cause of action herein relates to land. But, Mr. Mwanzia, counsel for the 2nd defendant, insisted that despite the fact that land is involved, this court has jurisdiction to try the case. He sought for time to address the court on jurisdiction through written submissions.

[2] Mr. Mwanzia obliged. In his written submissions he urged that parties are bound by their own pleadings. As such, a court of law derives its jurisdiction from the pleadings filed and the law applicable thereto. Accordingly, this court is under duty to apply the Married Women Matrimonial Property Act which reserves matter thereto for the High Court. He referred to the case of **Dakianga Distributors (K) Ltd v Kenya Seed Company Limited [2015] eKLR**, **IEBC & Leonard Okemwa v Stephen Mutinda Mule & 3 others Civil Appeal No. 219 of 2013, Co-Operative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 others [2017] eKLR** and **Martha Wambui Wario v Moses Ndungu Wario [2016] eKLR**.

[3] I should settle one misapprehension. A court of law does not derive its jurisdiction from the pleadings before it but from either the Constitution or legislation. This was so stated by the Supreme Court in the case of **Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] eKLR** that:

“A Court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.”

[4] These proceedings were commenced by way of Originating Summons pursuant to Married Women Matrimonial Property Act. The said Act was repealed by the enactment of Matrimonial Property Act. Nonetheless, any such proceedings or right which had already been filed or accrued before the repeal is not affected by the repeal. In any case, the purport of the repealed Act was carried over in the new Act. Under both laws, the High Court has jurisdiction on matters of Matrimonial property- here I mean division of as well as declaration of rights to property among spouses. In this cause, the Applicant has sought declarations of rights of spouse in a matrimonial property and also annulment of sale of NYAKI/KITHOKA/[Particulars withheld] to the 2nd Defendant. The latter relief is the one that injects confusion in these proceedings and may easily be mistaken to be a dispute relating to land within the jurisdiction of the Environment and Land Court. But, I am of the considered view that the offending part will not deprive the High Court of jurisdiction to try the case especially for purposes of declaration of property rights of a spouse in the matrimonial property. See section 17 of the Matrimonial Property Act below:-

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.

[5] Before I close, I wish to thank Mr. Mwanzia for his relentless quest for the right path to be followed. This matter shall be heard and disposed of in the High Court. A date on priority basis shall be assigned to this cause. It is so ordered.

Dated, signed and delivered in open court at Meru this 17th day of July 2018

F. GIKONYO

JUDGE

In the presence of:

M/s. Kiome advocate for Plaintiff

M/s. Njenga advocate for 2nd defendant

F. GIKONYO

JUDGE