



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

ENVIRONMENT & LAND CASE NO. 89 OF 2012

JACINTA KAWIRA KOBIAPLAINTIFF

VERSUS

JAMES ATHEERU JOB KOBIA.....1ST DEFENDANT

ALEX GITONGA KOBIA.....2ND DEFENDANT

R U L I N G

This Ruling concerns a notice of Preliminary Objection filed by the 2nd defendant. The Preliminary Objection is dated 6th February, 2013 and states:-

“NOTICE OF PRELIMINARY OBJECTION”

The 2nd defendant will raise the following preliminary objection during the hearing of this matter:-

1. ***THAT the Honourable Court lacks jurisdiction to hear and determine this matter”.***

I do note that in her plaint the Plaintiff prays for judgement against the defendants for:-

- a. ***a declaration that 1st defendant is not legally entitled to empower the 2nd defendant to take any Matrimonial responsibility regarding the Plaintiff together with any other matrimonial property.***
- b. ***Costs of this suit.***
- c. ***Any other better relief.***

I note that the suit was filed as HCCC NO. 89 of 2012, at Meru, as per the plaint. The plaint does not say that the suit should have been heard by the ELC Court. In the first place, the parties appeared before, the Hon Lady Justice Lesit, J, of the High Court Division.

The Preliminary Objection is crafted in a veritably nebulous and laconic manner. Perhaps as the 2nd defendant states, the matter should be raised during the hearing of the suit.

I find that the issues that the parties are raising in their Submissions can only be effectively be heard during the hearing of the main suit. Whether the orders sought by the Plaintiff can only be heard and determined by the family Division of the High Court is an issue that invites arguments and therefore brings in the need for evidence. The mere mention of “matrimonial responsibility” and “any other matrimonial property” in prayer (a) of the prayers in the plaint, does not mean that the Plaintiff is seeking matrimonial property”. Part of the prayer seems to suggest that she treats herself as part of

matrimonial property. But the sensitive gist is that she seeks an order, inter alia, that the 1st defendant is not entitled to assign her to the 2nd defendant. To me, this does not amount to seeking orders that determine issues of matrimonial property as claimed by the 2nd defendant in his Submissions.

I have carefully examined the Submissions of the parties. I find that the mere statement that the suit can only be heard by the family division of the High Court does not raise pure points of law. The Preliminary Objection invites arguments. I, therefore dismiss it.

Having dismissed the Preliminary Objection, and in the interests of justice, I direct as follows:-

1. ***Parties do move the registry to have this suit heard by a Judge of the High Court, as though it refers to Title No. AMWATHI/MAUA/5870, the issues raised have got little to do with land.***
2. ***Costs so far to be in the suit.***

It is so ordered.

Delivered in open Court at Meru this 10th day of November, 2015 in the presence of:-

CC: Daniel/Lilian

B.G Kariuki for Plaintiff

Mbogo Absent for Defendants

P. M. NJOROGE

JUDGE