



**Somoni v Muangi & another (Environment & Land Case
E009 of 2024) [2025] KEELC 4565 (KLR) (16 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4565 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND CASE E009 OF 2024**

**CK NZILI, J
JUNE 16, 2025**

BETWEEN

JOYCE BOSIBORI SOMONI PLAINTIFF

AND

SAMMY MUSILI MUANGI 1ST DEFENDANT

LAND REGISTRAR, KITALE 2ND DEFENDANT

RULING

1. By an application dated 27/2/2025, the court is asked to stay the hearing and determination of this suit given that the High Court Nairobi Family Division is seized of Civil Suit No. E051 of 2023 (OS) between SMM and JBS. In the alternative, the court is asked to consolidate the instant file with the referenced file so that the two can be heard and determined together. The reasons are set out on the face of the notice of motion and in a supporting affidavit sworn on 27/2/2025, by SMM.
2. The applicant deposes that the two have been married for 22 years but divorced on 9/1/2024 and that the suit properties fall under matrimonial properties whose division or otherwise falls under the jurisdiction of the High Court.
3. The applicant deposes that the suit for division of matrimonial properties or assets was lodged on 19/6/2023, to which the respondent appeared and pleaded through the same law firm now representing her before this court, only to file parallel proceedings. The applicant avers that the parties were to appear for pretrial on 19/3/2025 and had expressed readiness to go for mediation. The applicant avers that it is best to consolidate and hear the two files together to save judicial time, otherwise, there is a risk of contradictory judgment by courts of equal status, which will bring disrepute to the administration of justice.
4. Again, the applicant avers that the respondents had also filed ELC No. E083 of 2022 before Kajiado Court which was also stayed. The applicant has attached a copy of the decree nisi, decree absolute



originating summons dated 14/6/2023, a notice of appeal dated 11/7/2023, a reply dated 14/2/2023, and a ruling in Kajiado ELC Case No. E083 of 2022 as annexures SMM 1-6, respectively.

5. The application is opposed through a replying affidavit sworn by Joyce Bosibori on 16/4/2025. He avers that the main issue in this matter is fraudulent transfers of the suit properties through forgery. That this matter precedes the matrimonial cause. The respondent avers the applicant forged her signature and used the name of a deceased advocate to effect the transfers, which matter she reported the fraud to the police, where they recommended charges against the applicant. Annexed as JBS1 is a copy of the complaint.
6. The respondent further avers that the applicant filed ELC Petition No. E18 of 2023 challenging his prosecution where he obtained stay orders. Annexed and marked as JBS2 a-b are copies of the pleadings and the orders. She avers that she the DPP has since filed grounds of opposition in the said petition due for mention on 4/6/2025 and annexed as JBS3. The respondent adds that the applicant is out to frustrate her right to fair hearing, is vexatious and an abuse of the court process.
7. Stay of proceedings is governed by Order 42 Rule 6 of the Civil Procedure Rules.
8. A party seeking such orders must demonstrate exceptional circumstances why it is in the interest of justice to grant such orders, otherwise it interferes with the court's duty to expeditiously dispose of matters and the parties' rights to access justice, and to be heard without delay and the right to fair trial.
9. In *KWS -vs- Mutembei* [2019] eKLR, the court observed that the factors to consider include the prima facie merits of the appeal, the security and prudent utilization of judicial time, whether the application has been brought expeditiously and whether it is in the interest of justice to grant the relief sought. Sufficient cause must therefore be shown why a stay of proceedings should be granted as held in *Re Global Tours & Travels Limited Nairobi H.C Winding up Cause No. 43 of 2000*.
10. In *Halsbury's Laws of England 4th Edition Vol. 3 of page 330*, it is observed that a stay of proceedings is a serious, grave, and fundamental interruption in the right that a party has to conduct his trial based on substantive merits of his case and that the court should not impose stay unless the proceeding beyond a reasonable doubt, ought not to be allowed to continue. Further, it is observed in the same text that the power should sparingly be used unless the proceedings are shown to be frivolous, vexatious, harassing, manifestly groundless, or depicting no cause of action in law or equity.
11. In the suit before the court, there is no dispute that the plaintiff and the 1st defendant were husband and wife when the suit property was acquired and registered. It is also not disputed that the two formally divorced on 9/1/2024 and obtained decree nisi absolute dated 9/2/2024. Further, it is not disputed that a suit under the *Matrimonial Property Act* 2013 was filed on 20/3/2024 by an amended originating summons dated 19/3/2024 before the Family Division of the High Court Nairobi, listing L.R No. Trans Nzoia/Gidea/9 as one of the contested parcels of land. Further, it is not disputed that the 1st defendant filed a replying affidavit sworn on 24/2/2025 opposing the affidavit of service confirming the dissolution of marriage and raising several issues as regards the manner of acquisition, transfer, and registration of the alleged matrimonial properties under the applicant's names. The 1st defendant in the said reply also confirms the existence of several other suits among them the Kajiado ELC Case No. EO83 of 2022.
12. This suit was filed on 1/3/2024. By that time there is no dispute that the plaintiff knew as of 11/7/2023, the existence of the Nairobi matter. In the instant suit, the plaintiff pleads trespass to and fraudulent acquisition of title to LR No. Trans Nzoia/Gidea/9 by the applicant on 8/6/2022 without her knowledge, consent, or approval.



13. The plaintiff has sued the applicant alongside the Land Registrar, Kitale for being party to the illegal and fraudulent acquisition of her land. The plaintiff seeks declaratory orders that the land belongs to her, cancellation of the title, permanent injunction, and damages for nuisance and trespass.
14. The 1st defendant has opposed the suit vis a statement of defense dated 18/12/2024. He pleads that the sale agreement entered into by the plaintiff to purchase the land was as an agent, since he was out of the country, though he is the one who paid for the purchase price. Further, the 1st defendant pleads that he was assigned and authorized in writing to transfer and register the land into his name by the plaintiff, after assisting the vendor to obtain letters of administration in Nairobi High Court Succession Cause No. 2649 of 1996, who later transmitted the land to him and acquired a title deed on 8/6/2022, hence denied the alleged fraud.
15. The 1st defendant avers that after divorce in February 2024, he took possession of land but was chased away. The 1st defendant avers that the suit offends Section 6 of the [Civil Procedure Act](#) is res judicata, due to the transmission of the land through a succession cause, without any claim by the plaintiff and that the court lacks jurisdiction to hear and determine matrimonial property.
16. Jurisdiction is everything and without it, a court of law cannot make even a step further as held in Owners of Motor Vessel Lillian “S” -vs- Caltex Oil (K) Ltd [1989] KLR 1. The power to hear and determine matrimonial property disputes is set out under Sections 12 and 17 of the [Matrimonial Property Act](#) 2013. In Wambui Ngeru -vs- Timothy Mwangi Ngeru [2015] eKLR, the court held that the section does not specify which court has exclusive jurisdiction to hear and determine disputes relating to matrimonial property rights. Rule 6 of the Matrimonial Property Rules 2022, now operational, provides that an application to enforce a claim relating to matrimonial property may be made to the High Court or to a lower court if it has pecuniary and geographical jurisdiction. Rule 5 thereof provides that a spouse may apply for the same within 12 months, from the date of issuance of a decree absolute. Rule 3 thereof, provides that the objective of the Rules is to facilitate expeditious, just, proportionate, and affordable resolution of disputes and a court where the application is made shall seek to give effect to the spirit and principles of [the Constitution](#).
17. While determining whether or not a court has jurisdiction, in Muriungi -vs- Mwebia & Others ELC Appeal EO27 of 2024 [2024] KEELC 4558 [KLR] (6th June 2024) (Ruling), the court observed that the framers of our Constitution left no doubt in donating the power to handle disputes falling under the [Land Act](#) and the [Land Registration Act](#) to this court. The court cited Bank of African Ltd & Another -vs- TSS Investment Ltd & Other [2024] KECA 410 [KLR] (26th April 2024) (Judgment) and Joel, Kwatha, Mbalukah & Associates -vs- Daniel, Ochieng Ogol T/A Ogolla Okello & Co. Advocates [2019] eKLR, that in construing whether the Environment and Land Court has jurisdiction in a matter, regard must be had on the dominant issue in dispute and whether the issue relates to the environment, use, occupation of and title to land.
18. The dominant issue in the suit before me is the manner, nature, status, rights, and interests of the parties to the suit land before it came under the name of the 1st defendant on 8/6/2022. The plaintiff raises issues of fraudulent acquisition of the title. In the witness statement dated 9/1/2025, the plaintiff's witness sets out the facts as obtaining a rectified grant through fraud and misrepresentation by the 1st defendant to obtain title to the land. The witness states that they have applied for the nullification of the said confirmation in Nairobi. It is not in dispute that the title to the suit land was procured during the pendency of the divorce proceedings.
19. Article 45 of [the Constitution](#) provides that parties before, during, and after the dissolution of marriage have equal rights.



20. The applicant takes the view that the court sitting on a Family Division of the High Court is better placed to determine who among the applicant and the respondent, had rights to the suit land before it came under the name of the 1st applicant.
21. The Family Division of the High Court is governed by Section 12 of the [Matrimonial Property Act](#). It can determine alienation by way of sale, gift, lease, mortgage, or otherwise of any estate or interest in any matrimonial property during the subsistence of marriage without the consent of a spouse, or eviction from the matrimonial home. There is also a presumption that property purchased during the subsistence of marriage under Section 14 thereof is held in trust for the other spouse. Under Section 17 thereof, the family division of the High Court has the mandate to pronounce itself and declare the rights of the spouses or former spouses.
22. The respondent admits that she was aware of the pendency of the matter almost over, 7 months before filing this suit. The applicant admits that the matter in the family court had been screened and referred to mediation. In MMK -vs- JJM & another 2022 eKLR, the court observed that [the Constitution](#) did not envisage a declaration on ownership whose consequences on registration of title requiring cancellation to force parties to move to the Environment and Land Court, to effectuate the findings and determination of the High Court.
23. In RC -vs- DKS [2018] eKLR, the court observed that Section 101 of the [Land Registration Act](#) provides for certain matrimonial property rights and co-ownership rights to be determined by this court, and therefore nothing under Section 17 of the [Matrimonial Property Act](#) 2013, precluded an Environment and Land Court from hearing a matter that is touching on use, occupation, and title to land.
24. Applying the principles on whether to stay or consolidate or transfer as set out in decided cases, this suit was filed after the High Court matter. My reading of the law is that the Family Division of the High Court Nairobi has exclusive as well incidental jurisdiction to make orders on ownership of matrimonial property. The suit land is listed in the matrimonial cause as forming part of the plaintiff's and the 1st defendant's properties acquired during the subsistence of their marriage.
25. In determining and declaring the rights of the parties, Family Division of the High Court will be within its jurisdiction to hear and determine the issue of an alleged fraudulent acquisition of title by the applicant and the rights of access by each of the parties. In my considered view the filing of suits in different courts as is the case herein when the right forum to litigate the issue under Section 17(b) of the [Matrimonial Property Act](#) had been invoked amounts to an abuse of the court process.
26. In the premises, the application dated 27/2/2025 is allowed in terms of staying this suit until the matrimonial suit is heard and determined for a period of six months. Orders accordingly.

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 16TH DAY OF JUNE 2025.

In the presence of:

Court Assistant - Dennis

Mr. Muthama for the 1st defendant/Applicant present

Omondi for the plaintiff present

Jerubet for the 2nd defendant present

HON. C.K. NZILI



JUDGE, ELC KITALE.

