



**Maritim v Maritim (Petition E001 of 2025) [2025] KEHC 13476 (KLR)  
(Commercial and Tax) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13476 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
PETITION E001 OF 2025  
PM MULWA, J  
SEPTEMBER 25, 2025  
IN THE MATTER OF SECTIONS 780 & 782 OF THE COMPANIES ACT NO 17 OF 2015  
AND  
IN THE MATTER OF CHERUBET COMPANY LIMITED  
AND  
IN THE MATTER OF PROTECTION OF MEMBERS AGAINST  
OPPRESSIVE CONDUCT AND UNFAIR PREJUDICE  
BETWEEN  
EPIMACH KIPCHIRCHIR MARITIM ..... PETITIONER  
AND  
MARY CHEROP MARITIM ..... RESPONDENT**

**RULING**

1. Before me for determination is the Respondent's Preliminary Objection dated 14<sup>th</sup> February 2025. The objection is premised on the ground that this Court lacks jurisdiction to hear and determine the present petition by virtue of Section 7 of the *Matrimonial Property Act*, 2013, and that the issues raised are directly and substantially in issue in Nairobi HCCOMM E008 of 2025: Mary Cherop Maritim v Epimach Kipchirchir Maritim, thus offending the doctrine of sub judice.
2. The Respondent's case, as canvassed in her submissions, is that Cherubet Company Limited was incorporated during the subsistence of the marriage between the parties and constitutes matrimonial property. Both parties are shareholders, with the Respondent as the managing director. It is urged that, under section 7 of the *Matrimonial Property Act*, questions relating to division and ownership of matrimonial property lie within the Family Division of the High Court, and not before the



Commercial Division. Further, it is contended that since the issue of directorship, shareholding, and control of the company is pending in Nairobi HCCOMM E008 of 2025, the present petition amounts to an abuse of court process, contrary to Section 6 of the *Civil Procedure Act*.

3. The Petitioner, in opposition through submissions dated 28<sup>th</sup> February 2025, argues that this Court is properly vested with jurisdiction under sections 780 and 782 of the *Companies Act*, 2015, to inquire into allegations of oppressive conduct, unfair prejudice, and disregard of the interests of members. According to the Petitioner, the present petition does not invite the Court to determine ownership or division of matrimonial property, but rather seeks remedies grounded in company law. He further submits that the suit in the Family Division was filed for the limited purpose of preservation of assets perceived by the Respondent to be matrimonial property, while the present petition presents a distinct cause of action in commercial law.

### **Analysis and determination**

4. The starting point is the settled principle that jurisdiction is everything. As held in *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] KLR 1, where a court finds it has no jurisdiction, it must down its tools.
5. The Respondent relies on section 7 of the *Matrimonial Property Act*, which provides:

“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.”
6. This provision empowers the Family Division to adjudicate disputes over ownership and division of matrimonial property.
7. However, the present petition, on its face, is brought under sections 780 and 782 of the *Companies Act*, 2015, which empower this Court to grant relief to members of a company where the company’s affairs are conducted in an oppressive manner, prejudicial to the interests of members, or in disregard of their rights.
8. The doctrine of sub judice, codified under section 6 of the *Civil Procedure Act*, bars a court from proceeding with a suit in which the matter in issue is directly and substantially in issue in a previously instituted suit between the same parties pending before a competent court. The test, as restated in *Kenya National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 others (Interested Parties)* [2020] eKLR, is whether the subject matter, issues, and parties are substantially the same.
9. Having considered the pleadings and submissions, it is clear that while there is an overlap of parties, the causes of action are distinct. The petition before this Court seeks reliefs peculiar to company law, protection of shareholder rights from oppression and unfair prejudice. The suit in the Family Division, Nairobi HCCOMM E008 of 2025, raises questions of preservation and division of matrimonial property. The remedies, legal tests, and applicable statutes differ.
10. The Court of Appeal in *Patrick Musimba v National Land Commission & 4 others* [2016] eKLR emphasized that the doctrine of sub judice is not a mere technical rule, but a rule designed to prevent duplication of proceedings and the risk of conflicting decisions. However, for the bar to apply, the issues must be directly and substantially the same.
11. In the instant case, I am not persuaded that the doctrine of sub judice applies. While the same company is the subject of both suits, the issues framed are not identical. Whether Cherubet Company Limited



is matrimonial property is a matter for the Family Division. Whether the conduct of the Respondent as managing director amounts to oppression or unfair prejudice is a matter within the purview of this Division under the *Companies Act*.

11. In the result, I find that this Court is properly seized of jurisdiction under sections 780 and 782 of the *Companies Act*, 2015. The objection based on section 7 of the *Matrimonial Property Act* is misplaced, as the petition does not invite this Court to adjudicate division of matrimonial property.
12. The Preliminary Objection dated 14<sup>th</sup> February 2025 is accordingly dismissed. Costs shall abide the outcome of the petition.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 25<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**PETER M. MULWA**

**JUDGE**

In the presence of:

Mr. Lagat for Petitioner

Mr. Ondabu for Respondent

Court Assistant: Carlos

