



REPUBLIC OF KENYA



KENYA LAW
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**Matayia v Matayia (Environment and Land Appeal E030 of 2025)
[2025] KEELC 7465 (KLR) (3 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7465 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT AND LAND APPEAL E030 OF 2025
MN MWANYALE, J
NOVEMBER 3, 2025**

BETWEEN

JOHN OLE MATAYIA APPELLANT

AND

HELLEN CHEPKORIR MATAYIA RESPONDENT

RULING

1. Upon consideration of the Application dated 27th March 2025, seeking leave of court to file an appeal out of time from the decision of Hon. W.C Waswa delivered on 20th December 2024 in Kilgoris CM ELC case E070/2021. Upon further perusal of the supporting affidavit and the annexures thereto including the draft Memorandum of Appeal.
2. Upon consideration of the Replying affidavit of Hellen Chepkorir Matayia, the Respondent and taking into account the rival submissions filed in respect of the application as directed by court.
3. Noting that the Draft Memorandum of Appeal raises the issue of misapplication of section 6 and 14 of *Matrimonial property Act*, as well as proof of contribution or otherwise in the marriage between the parties herein, the court frames jurisdiction issue, as to whether the dispute before the trial court having been a dispute involving matrimonial property, whether its appeal would rightly be lodged before the ELC Court.
4. None of the parties has raised this jurisdictional issue, but the court has to determine its jurisdiction first before dealing with any issue; as was stated in Owners of the Motor Vessel “Lilian S.” Vs. Caltex Oil (Kenya) Ltd civil Appeal No. 50 of 1989 where the court held inter alia, “jurisdiction is everything and it goes to the root of the case; without jurisdiction, the court must down its tools”.
5. Now therefore looking at the provisions of ELC Act, the jurisdiction of the ELC is in relation to “occupation, use and title” of land and the issues raised in the intended Appeal are issues arising from a share of matrimonial property and would thus be a preserve of the High Court of Kenya.



6. From the above, it follows that this court is bereft of jurisdiction and must down its tools.
7. The consequence is that the application having been filed before the wrong forum is hereby struck out with costs to the Respondents.

DATED AT KILGORIS THIS 3RD DAY OF NOVEMBER, 2025.

HON. M.N MWANYALE

JUDGE

In the presence of

CA – Emmanuel/Sylvia/Sandra

Mr. Kiprotich for the Applicant

N/A for the Respondent

