

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND
ELC E022 OF 2025

RISPER CHEPOTIPIN

JOEL-----PLAINTIFF

VERSUS

JOEL KUKWAI TERER-----

1ST DEFENDANT

LAND REGISTRAR-WEST POKOT COUNTY-----2ND
DEFENDANT

RULING

- 1.** The plaintiff, vide a plaint dated **14/5/2025**, came to this court seeking a permanent injunction to restrain the defendants, their agents, servants, and employees from selling, subdividing, transferring, cautioning, or dealing with **West Pokot/ Siyoi 'A'/345**, which measures **55.5 Ha**. The plaintiff also sought a declaration that the suit parcel is matrimonial property. She simultaneously filed an application seeking a grant of temporary injunction pending the application and the main suit.
- 2.** The defendant, on the other hand, filed a defence dated **16/6/2025**, raising a preliminary objection on the jurisdiction of this court. He averred that the suit falls under the family division and ought to be dismissed with costs. Upon hearing the application interpartes on

25/6/2025, the court granted a temporary injunction to last for one **(1)** year only.

- 3.** Subsequently, on **18/9/2025**, Mr Maiyo, learned counsel for the plaintiff, submitted that since the matter involves husband and wife, it could be mediated. Other counsels on record agreed to the proposed mediation. Parties were therefore granted **45** days to attempt to settle the matter out of court.
- 4.** On **28/10/2025**, learned counsel for the plaintiff confirmed that the mediation process bore no fruit. It is at this stage that the issue of jurisdiction arose. A preliminary objection, as held in **Mukisa Biscuits Manufacturing Co. Ltd -vs- West End Distributors Ltd (1969) EA 696**, is a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which, if argued as a preliminary point, may dispose of the suit.
- 5.** In **Aviation & Allied Workers Union Kenya -vs- Kenya Airways Limited & 3 Others [2015] eKLR**, the court held that a preliminary objection can only be raised on a pure question of law, and the court has to be satisfied that there is no proper contest as to the facts.
- 6.** From the plaint, the plaintiff describes the 1st defendant as her husband, married in the **1960s**, and the

registered legal proprietor of the suit parcel, alleged to be both ancestral and matrimonial property. It is averred that the suit land has partly or wholly been sold without her consent, hence the caution registered against the title register with the 2nd defendant, said to have been tampered with or lifted without her knowledge, rendering her and the family homeless or destitute. She prays for a permanent injunction and a declaration that the land is matrimonial.

7. The 1st defendant opposes the suit by a statement of defence dated **16/6/2025**, admitting that the plaintiff is his wife and his rights to share or distribute the land as he wishes. He does not deny the property as ancestral in nature and as subject to the overriding rights of his wife and children, said to be under the risk of destitution or being rendered homeless if it is disposed of. The 1st defendant does not specifically address the issue of the caution and its removal by the 2nd defendant without involving the plaintiff or other family members. Spousal consent in disposing of the suit land has not been addressed by the 1st defendant. The 2nd defendant is yet to file a statement of defence as of the delivery of this ruling.

- 8. Rule 6 (1)** of the Matrimonial Property Rules provides that an application to enforce a claim relating to matrimonial property may be made to the High Court, where the value of the matrimonial property which is the subject matter of the claim exceeds the pecuniary jurisdiction of a magistrate's court; or to a magistrate's court having civil jurisdiction to adjudicate matters within the court's pecuniary jurisdiction.
- 9.** The jurisdiction of the Environment and Land Court is stipulated under **Section 13 of the** Environment and Land Court Act, 2011. **Subsection (1)** and **Article 162(2)(b)** of the Constitution and any other applicable laws.
- 10.** The disputes include those relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources, compulsory acquisition of land, land administration and management, public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land. The court also has jurisdiction over violations or infringements of, or threats to, rights or fundamental freedoms relating to a clean and healthy environment under **Articles 42, 69, and 70**

of the Constitution. Overriding interests, trusts, and other rights not stated on the register of title under **Sections 24, 25, 26, 27, and 28** of the Land Registration Act equally fall under the jurisdiction of the Environment and Land Court and not the Family Division of the High Court.

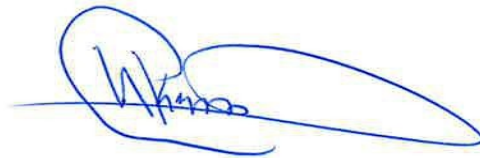
- 11.** It is trite that jurisdiction emanates from the Constitution or written law, as held in ***Owners of The Motor Vessel "Lilian S" -vs- Caltex Oil (Kenya) Ltd [1989] eKLR.*** Jurisdiction is everything, and without it, a court cannot move any step further. Though the dispute in this suit borders on whether the suit land is matrimonial property or not, the land registrar, West Pokot, has been sued alongside the husband of the plaintiff, for alleged breach of the overriding rights of the plaintiff. The predominant issue here falls for determination by this court and not any other court.
- 12.** Striking out a suit is a draconian step. A preliminary objection should not be based on facts, evidence, or the exercise of a court's discretion. In the circumstances, the preliminary objection captured in paragraph **7** of the statement of defence is rejected for lack of merit, for it is not a pure point of law.

Ruling dated, signed, and delivered via Microsoft Teams/Open Court at Kitale on this 10th day of December 2025.

In the presence of:

Court Assistant - Dennis

No appearance

A handwritten signature in blue ink, appearing to be 'C.K. Nzili', written over a horizontal line.

**HON. C.K. NZILI
JUDGE, ELC KITALE.**