



**Njoroge v Mwangi (Environment and Land Case E184 of 2025)
[2026] KEELC 341 (KLR) (28 January 2026) (Ruling)**

Neutral citation: [2026] KEELC 341 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND CASE E184 OF 2025**

**JM ONYANGO, J
JANUARY 28, 2026**

BETWEEN

KELLEN NYAMBURA NJOROGE PLAINTIFF

AND

SIMON MUTHAA MWANGI DEFENDANT

RULING

1. The Plaintiff filed suit against the Defendant claiming she is the lawful, beneficial, and exclusive owner of land parcel Kiambu/municipality Block 5 (kiamumbi)/1223 (hereinafter referred to as the “suit property”), having acquired title in October 2010 and taken immediate possession by residing there with her three children.
2. It is her position that in February 2010 the Defendant forcefully and unlawfully entered the suit property, violently assaulted and evicted her and her children, and has since wrongfully remained in occupation without any license, consent, or legal entitlement; despite repeated demands, police intervention, and attempts by the Plaintiff to regain possession over the years.
3. The Plaintiff adds that the Defendant has refused to vacate, used threats, intimidation, and goons to bar access, and continues to interfere with the Plaintiff’s quiet possession, thereby causing her substantial loss through payment of rent elsewhere exceeding Kshs. 5,000,000 over a period of more than 15 years, and exposing her and her children to imminent homelessness, hence necessitating the Court’s intervention to vindicate her proprietary rights and grant the reliefs sought.
4. Together with the Plaintiff dated 4th September 2025, the Plaintiff filed a Notice of Motion application of even date seeking inter alia eviction orders against the Respondent and injunctive orders restraining the Defendant from interfering with her quiet enjoyment and occupation of the suit property. In response, the Defendant filed a Notice of Preliminary Objection dated 21st October 2025 on the following grounds:



- i. That the suit herein primarily raises the question of matrimonial property, which matters are regulated under the [Matrimonial Property Act](#), 2010.
 - ii. That this honourable court lacks original jurisdiction to entertain the present suit, and the same ought to have been filed in the Family Division of the court, not the Environment and Land Court.
5. The court directed that the Preliminary Objection be disposed of by way of written submissions; none of the parties had complied at the time of writing this Ruling.

Analysis and Determination

6. Having considered the Preliminary Objection, the sole issue for determination is whether the Preliminary Objection should be upheld.
7. I will start by defining a Preliminary Objection. In the case of *Mukisa Biscuits Manufacturing Ltd vs West End Distributors* (1969) EA 696 the Court of Appeal observed that:

“... a preliminary objection consists of 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. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by a contract giving rise to the suit to refer the dispute to arbitration”.

In the same case Sir Charles Newbold, P. stated:

“a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of preliminary objections does nothing but unnecessarily increase costs and on occasion, confuse the issue, and this improper practice should stop”.

8. The Defendant’s Preliminary Objection is anchored on the contention that the dispute before this Court concerns matrimonial property and therefore falls within the jurisdiction of the Family Division pursuant to the [Matrimonial Property Act](#). The sole issue for determination is whether, on the face of the pleadings, the suit discloses a matrimonial property dispute so as to divest this Court of jurisdiction.
9. The concept of matrimonial property in Kenya is statutorily defined. Section 6(1) of the [Matrimonial Property Act](#) provides that matrimonial property consists of :
- i. the matrimonial home or homes;
 - ii. household goods and effects in the matrimonial home or homes; and
 - iii. any other immovable or movable property jointly owned and acquired during the subsistence of a marriage.
10. From the foregoing definition, it is evident that the existence of a marriage is a foundational prerequisite to a claim founded on matrimonial property. Without a marriage, whether statutory, customary, or otherwise recognised in law, the provisions of the [Matrimonial Property Act](#) do not apply.



11. In the present matter, the Plaintiff has expressly pleaded, both in the Plaint and at paragraph 6 of her Supporting Affidavit sworn on 4th September 2025, that her relationship with the Defendant did not culminate in a marriage. That assertion must, for purposes of a preliminary objection, be taken as true.
12. The Defendant, on the other hand, invites this Court to treat the suit property as matrimonial property without placing before the Court any admitted or undisputed facts demonstrating the existence of a marriage. Whether the parties were married, the nature of their relationship, and whether any spousal rights accrued are matters of evidence, not matters of pure law.
13. It therefore follows that the Defendant’s objection is premised on a contested factual foundation, namely the existence of a marriage. This alone renders the objection unsuitable for determination as a preliminary objection.
14. This Court is bound to determine jurisdiction on the basis of the pleadings as filed, not on speculative or disputed assertions raised by the Defendant. A reading of the Plaint reveals that the Plaintiff’s claim is founded on her alleged status as the registered proprietor of the suit property and on allegations of unlawful eviction, trespass, and continued illegal occupation by the Defendant.
15. The reliefs sought by the Plaintiff are remedies arising from disputes over title, occupation, and use of land, which fall squarely within the jurisdiction of the Environment and Land Court under Article 162(2)(b) of *the Constitution* and Section 13 of the *Environment and Land Court Act*.
16. More importantly, the Plaintiff does not seek a declaration that the suit property is or is not matrimonial property, nor does she seek division or apportionment of property between spouses. The mere allegation by the Defendant that the dispute “touches on” matrimonial property does not, without more, transform the suit into a matrimonial cause.
17. To uphold the Preliminary Objection would require this Court to first determine whether a marriage existed between the parties and whether the suit property was acquired during such marriage. Such an inquiry would necessitate the taking of evidence and the exercise of judicial discretion, which is prohibited at the preliminary objection stage.
18. In the circumstances, I find that the Defendant’s Preliminary Objection does not raise a pure point of law. It is predicated on disputed facts, particularly the existence of a marriage, which can only be resolved at a full hearing.
19. I further find that, as pleaded, the dispute concerns ownership, occupation, and alleged trespass over land, matters which properly fall within the jurisdiction of this Court.
20. Consequently, the Preliminary Objection is without merit and is hereby dismissed with costs to the Plaintiff.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 28TH DAY OF JANUARY 2026.

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J. M ONYANGO
JUDGE

In the presence of:

Mr. Bosire for Mr Okubasu for the Plaintiff/ Applicant

No Appearance for the Defendant



Court Assistant: Hinga

