



REPUBLIC OF KENYA



**Manyara v Omurwa (Matrimonial Cause E045 of 2025)  
[2026] KEHC 1736 (KLR) (Family) (13 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 1736 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
MATRIMONIAL CAUSE E045 OF 2025  
H NAMISI, J  
FEBRUARY 13, 2026**

**BETWEEN**

**LINDA MANYARA ..... APPLICANT**

**AND**

**FRED ISABOKE OMURWA ..... RESPONDENT**

**RULING**

1. The matter presented before this Court for determination arises from an Originating Summons dated 20 May, 2025, through which the Applicant seeks several declaratory orders regarding the ownership and division of matrimonial property following the dissolution of her marriage to the Respondent. The Applicant has moved the Court, specifically within the Family Law Division, invoking Sections 2, 6, 7, 14, and 17 of the *Matrimonial Property Act*, alongside Sections 3 and 3A of the *Civil Procedure Act*.
2. The factual background as deponed in the Supporting Affidavit indicates that the parties celebrated a Meru customary marriage between the years 2017 and 2018. During the subsistence of the union, the marriage was blessed with three minor children, of whom the Applicant currently has actual and physical custody. The marital relationship subsequently deteriorated, leading to divorce proceedings in the Mavoko Children's and Magistrate's Court, specifically Divorce Cause No. E051 of 2024, which culminated in the issuance of a Decree Nisi on 13 May, 2025.
3. Following the dissolution of the marriage, the Applicant sought the intervention of this Court to declare that several properties acquired during the marriage are owned in equal shares. The property list provided by the Applicant is extensive and includes both immovable and movable assets, including land parcel No. LR NO. 27409 in Greenpark Estate, Machakos County; LR No. Wanjare/Bogiakumu/8180 in Kisii County and several motor vehicles.



4. The Respondent responded to the Originating Summons by filing a Notice of Preliminary Objection dated 30 June, 2025. The core of the Respondent’s objection is a challenge to the territorial jurisdiction of the High Court at Nairobi. The Respondent contends that the parties are domiciled in Athi River Township, Mavoko Sub-county, within Machakos County, where they resided prior to and during the divorce. Furthermore, the Respondent asserts that the primary immovable property (Unit 80-41 in Greenpark Estate) is situated in Machakos County and that the divorce cause was heard and concluded in the Mavoko Law Courts. Consequently, the Respondent posits that the matrimonial cause ought to have been filed in the High Court at Machakos and not the Milimani High Court in Nairobi, rendering the current suit incompetent.
5. The Applicant, in her submissions dated October 7, 2025, counters this objection by arguing that while some immovable properties are in Machakos and Kisii, the movable properties are within Nairobi. Most significantly, the Applicant points out that the immovable property in Machakos is owned by Bobkil International Limited, a company whose physical office and registered postal address are in Nairobi. The Applicant further submits that both parties reside in Nairobi and conduct their business within the jurisdiction of this Court since the divorce, making Milimani the most administratively convenient forum.
6. The determination of a preliminary objection is a matter of significant procedural gravity. It requires the Court to assess whether a suit can be disposed of at the threshold on a point of law without the need for an expansive trial on the facts. The locus classicus on this subject remains the decision of the Court of Appeal in *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd (1969) EA 696*. In that case, the Court articulated a strict three-pronged test for what constitutes a valid preliminary objection.
7. First, a preliminary objection must be a pure point of law. Second, it must be argued on the basis that the facts pleaded by the other side are correct. Third, it must not be raised if any fact has to be ascertained or if the Court is required to exercise judicial discretion. A valid preliminary objection, if successful, renders the proceedings a nullity and prevents the wasteful expenditure of judicial resources on a fundamentally flawed suit.
8. As the Supreme Court of Kenya reiterated in *Aviation & Allied Workers Union Kenya v Kenya Airways Ltd & 3 Others (2015) eKLR*, the Court must be satisfied that there is no proper contest as to the facts before a preliminary objection can be sustained. If the objection is blurred by factual details calling for evidence, it loses the character of a preliminary objection and must be deferred to the hearing of the main suit.
9. In the present matter, the Respondent’s objection regarding territorial jurisdiction sits at the boundary of a pure point of law and a factual dispute. While jurisdiction is a matter of law, the facts underlying it—where the parties reside, where they carry on business, and where the cause of action arose—are frequently contested. The Respondent claims the parties are domiciled in Machakos, while the Applicant depones that they currently reside and work in Nairobi. Under the *Mukisa Biscuit* framework, this Court must be cautious about dismissing the suit entirely if the jurisdictional question is intertwined with disputed facts about residency and business operations.
10. The Respondent’s challenge to the place of suing is primarily grounded in the *Civil Procedure Act*. Sections 11 through 15 of the Act provide the statutory road map for the institution of civil suits.
11. Section 12 of the *Civil Procedure Act* mandates that suits relating to immovable property—specifically those for recovery, partition, or the determination of any right or interest in such property—shall be instituted in the Court within the local limits of whose jurisdiction the property is situated. The



Respondent argues that because the Greenpark Estate property is in Mavoko, Machakos County, this section compels the litigation to take place in the Machakos High Court.

12. This situs rule is intended to ensure that courts are familiar with the local context of the land they are adjudicating and to facilitate site visits or local inquiries if necessary. In *Wangui & 4 others v Nduta* (2024), the Environment and Land Court at Thika transferred a matter to the Ruiru Law Courts because the suit property was situated there and its value fell within the Principal Magistrate's pecuniary jurisdiction. This demonstrates that the physical location of the land is a primary consideration in original land disputes.
13. However, section 13 of the *Civil Procedure Act* provides a critical exception to the rigid application of section 12. It stipulates that where a suit involves relief respecting immovable property situated within the jurisdiction of different courts, the suit may be instituted in any court within the local limits of whose jurisdiction any portion of the property is situated.
14. In the case at hand, the Applicant's claim is not limited to the Machakos property. She also seeks declarations regarding property in Kisii County (Wanjare/Bogiakumu/8180) and several motor vehicles. While the snippets do not explicitly state that immovable property is located in Nairobi, the Applicant asserts that the movable properties are in Nairobi. If we consider the matrimonial estate as a single, multi-jurisdictional entity, section 13 allows for a degree of flexibility in choosing the forum, provided that a portion of the subject matter is within the chosen court's jurisdiction.
15. Furthermore, section 15 of the *Civil Procedure Act* governs "other suits"—those not purely about land recovery—and states that every suit shall be instituted in a court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, carries on business, or personally works for gain.
16. The Applicant argues that the Respondent carries on business in Nairobi through Bobkil International Limited, which has its registered office in the city. In *Diamond Trust Bank Kenya v Astonfield Renewable Resources Ltd* (2022), the Court determined it had jurisdiction under Section 15(b) because one of the defendants was a Kenyan corporate entity and another resided and carried on business in Kenya. This suggests that the residence and business anchors in Nairobi are legally sufficient to clothe the Milimani High Court with jurisdiction, especially given that the Respondent's company is registered there and his vehicles are charged to a Nairobi-based bank.
17. A nuanced understanding of the Court's jurisdiction requires looking beyond the *Civil Procedure Act* to *the Constitution*. Article 165(3)(a) grants the High Court unlimited original jurisdiction in both criminal and civil matters. This constitutional grant of power is the highest source of jurisdiction and cannot be completely ousted by procedural statutes.
18. The High Court is established as one court with various stations across the country for administrative efficiency. The concept of territorial jurisdiction between High Court stations is often a matter of administrative order rather than a strict legal bar. In *Atta (Kenya) Limited v Nesfood Industries Limited* [2012] eKLR, the Court dismissed a preliminary objection that argued a Nairobi court lacked jurisdiction over a cause of action arising in Mombasa. The Judge in that case emphasized the supremacy of *the Constitution* over the *Civil Procedure Act* and noted that Article 159(2)(d) mandates that justice shall be administered without undue regard to procedural technicalities.
19. The "One Court" theory posits that a judge sitting in Nairobi has the same inherent power as a judge sitting in Machakos. While it is desirable for parties to file suits in the station nearest to them, filing in a different station does not automatically render the suit a nullity. At the minimum, a party challenging the venue must demonstrate that the choice of forum threatens their right of access to justice under



- Article 48 of *The Constitution*. The Respondent in this case has not shown that litigating in Nairobi—a city where he conducts business and has a registered office—would be so inconvenient as to defeat the ends of justice.
20. The Respondent’s objection also fails to consider the specific nature of matrimonial property claims under the 2013 Act. The Applicant has invoked Section 17 of the *Matrimonial Property Act*, which provides a mechanism for the declaration of rights to property.
  21. Section 17 allows a spouse or former spouse to apply to the Court for a determination of rights to property that is contested. Crucially, Section 17(2)(c) permits such an application even if a petition has not been filed under any other matrimonial law. This means that a claim for the declaration of property rights is a distinct civil cause of action, separate from the divorce petition. Therefore, the fact that the divorce was heard in the Mavoko Law Courts does not legally mandate that the property claim must follow the same territorial path.
  22. A declaration under section 17 is not necessarily pegged to the subsistence of a marriage or the location of the divorce. The High Court is specifically triggered when the value of the matrimonial property exceeds the pecuniary limits of the Magistrate’s Courts, which is capped at Kshs 20 million for Chief Magistrates. Given the evidence of bank financing and the nature of the assets involved, including high-value construction machinery like an XCMG grader, the High Court is the appropriate level of court. Whether it is the Nairobi or Machakos station is a matter of administrative logic.
  23. A third-order insight into this dispute involves the registration of the primary immovable property under a limited liability company, Bobkil International Limited. The Applicant argues that because the company is headquartered in Nairobi, the suit is properly anchored there.
  24. Under corporate law, a company is a separate legal person from its directors and shareholders. If the property being divided is technically the shares in the company rather than the physical land, then the location of the land in Machakos is of secondary importance to the registered office of the company in Nairobi.
  25. In resolving a jurisdictional challenge, this Court must be guided by the overriding objective of the *Civil Procedure Act*, as set out in sections 1A and 1B. This objective is to facilitate the just, expeditious, proportionate, and affordable resolution of disputes.
  26. The Respondent seeks to have the suit struck out/dismissed. Striking out a pleading is a draconian act of last resort. If this Court were to strike out the suit, the Applicant would merely have to re-file the same papers in Machakos, leading to significant delays, new filing fees, and the unnecessary duplication of judicial time. Such an outcome would fly in the face of Article 159’s mandate to avoid procedural technicalities and Article 48’s guarantee of expeditious access to justice.
  27. The Respondent’s reliance on the location of the divorce in Mavoko is legally misplaced. The *Matrimonial Property Act* provides for property declarations independent of divorce petitions. The fact that one legal battle ended in Mavoko does not preclude a new legal battle from beginning in Nairobi, especially where the parties have transitioned their lives and business to the capital following the divorce decree.
  28. Finally, the Respondent’s request to strike out the suit is an outdated approach that contradicts the constitutional principle of substantive justice. Even if this Court were to find that Machakos is a more convenient forum, the correct remedy would be a transfer under section 18, not a dismissal. However, given the Applicant’s role as the primary caregiver of three minor children in Nairobi and the corporate link to Nairobi, this Court finds that the High Court at Milimani is a perfectly competent and appropriate forum.



29. Consequently, the Respondent's Preliminary Objection dated 30 June, 2025, is hereby dismissed in its entirety. The Respondent is granted leave to file and serve his Replying Affidavit to the Originating Summons within 14 days from the date of this Ruling. The costs of this Preliminary Objection shall be borne by the Respondent and are to be paid to the Applicant in any event.

**DATED AND DELIVERED AT NAIROBI THIS 13 DAY OF FEBRUARY 2026**

**HELENE R. NAMISI**

**JUDGE OF THE HIGH COURT**

Delivered on virtual platform in the presence of:

For the Applicant: Ms Kyule h/b Mr Laichena

For the Respondent: N/A

Court Assistant: Lucy Mwangi

