

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT**  
**KAKAMEGA**  
**ELC CASE NO. 114 OF 2019**

**JANE NENJALA SASITA.....PLAINTIFF**

**VERSUS**

**WILLIAM WANYINYI SASITA.....1<sup>ST</sup>**  
**DEFENDANT**

**MAURISE MAKOKHA.....2<sup>ND</sup>**  
**DEFENDANT**

**R U L I N G**

**Introduction**

1. When this matter came up for directions on 18<sup>th</sup> March 2025, the court directed parties to file and exchange submissions on the question as to whether this court has jurisdiction to hear and determine this matter, in view of the fact that this dispute touches on matrimonial property.

2. On record are submissions filed by the plaintiff dated 19<sup>th</sup> March 2025. No submissions were filed by the defendants.

### **Plaintiff's submissions**

3. Counsel for the plaintiff submitted that the jurisdiction of this court is provided for in Article 162 (2) (b) of the Constitution of Kenya as read with section 13 of the Environment and Land Court Act and that therefore this court has jurisdiction to hear and determine disputes relating to use, occupation and title to land.

4. On the question as to whether this court has jurisdiction to hear and determine issues concerning matrimonial property, counsel relied on the cases of **Gladys Muthoni Kibui v Geoffrey Ngatia [2021] e KLR** and **Zipporah Njoki Kangara v Rock and Pure Limited & 3 Others [2021] e KLR** for the proposition that where the a matrimonial property touches on land, the ELC has jurisdiction to determine such dispute.

5. It was further submitted that it was not in contention that the suit property was matrimonial property, but that the plaintiff contests the sale by the 1<sup>st</sup> defendant for want of spousal consent. Counsel maintained that the plaintiff's claim is anchored on section 93 of the Land Registration Act and submitted that property acquired during the subsistence of a marriage ought to be dealt with under the Matrimonial Property Act.

### **Analysis and determination**

6. The court has carefully considered submissions made by the plaintiff. The only issue for determination is whether this court has jurisdiction to determine this suit. Jurisdiction is the power of the court to determine a dispute. Jurisdiction is everything, and therefore, before a court embarks on determining the merits of a dispute, it first ought to be satisfied that it has the requisite jurisdiction to hear and determine the same. In the case of **Owners of Motor Vessel "Lilian S" v Caltex Oil (Kenya) Limited [1989] KLR 1**, the court stated as follows;

**“Jurisdiction is everything. Without it a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings.”**

7. The jurisdiction of a court flows from the Constitution or statute or both and a court cannot arrogate to itself jurisdiction it does not have. In the case of **Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & Others (2012) e KLR** the Supreme Court of Kenya stated as follows;

**“A court’s jurisdiction flows from either the constitution or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.”**

8. The jurisdiction of this court is to hear and determine matters relating to the environment and the use and occupation of, and title to land. Article 162 (2) (b) of the Constitution of Kenya as read with section 13 of the Environment and Land Court Act provide for this court’s jurisdiction.

Article 162 (2) (b) of the Constitution of Kenya provides that;

**“Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to -**

**(a) ....**

**(b) The environment and the use and occupation of, and title to, land.”**

Section 13 of the Environment and Land Court Act provides that;

#### **“Jurisdiction of the Court**

**(1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of the Constitution and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.**

**(2) In exercise of its jurisdiction under Article 162(2)(b) of the Constitution, the Court shall have power to hear and determine disputes—**

**(a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations,**

- mining, minerals and other natural resources;**
- (b) relating to compulsory acquisition of land;**
- (c) relating to land administration and management;**
- (d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and**
- (e) any other dispute relating to environment and land.”**

9. In the instant suit, the plaintiff's grievance in the dispute is that she is lawfully married to the 1<sup>st</sup> defendant and that they acquired matrimonial properties including land parcel No. Kakamega/Sango/2076. That on 25<sup>th</sup> November 2014, without her consent, the 1<sup>st</sup> defendant entered into a land sale agreement with the 2<sup>nd</sup> defendant in respect of the suit property. She sought for orders *inter alia*, that the sale of the suit property be declared void for want of spousal consent.

10. In defence, the defendant pleaded that the plaintiff contributed “so little” towards the purchase of the suit

property despite being a teacher. He argued that he sold one acre from the suit property and contended that spousal consent was unnecessary in the circumstances.

11. Therefore, the issue that is raised from the pleadings herein is the extend of the plaintiff's contribution to the acquisition of the suit property, whether the same constitutes matrimonial property and whether spousal consent was necessary before sale thereof.

12. Section 6 of the same Act defines Matrimonial property as follows;

### **Meaning of matrimonial property**

**(1) For the purposes of this Act, matrimonial property means—**

**(a) The matrimonial home or homes;**

**(b) Household goods and effects in the matrimonial home or homes; or**

**(c) Any other immovable and movable property jointly owned and acquired during the subsistence of the marriage**

13. Regarding ownership of matrimonial property, Section 7 of the said Act vests ownership thereof in the

spouses in accordance to each spouse's contribution and provides as follows;

**7. Ownership of matrimonial property**

**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.**

14. On the requirement for spousal consent, section 12 (1) of the Act provides for the requirement of spousal consent before alienation of matrimonial property as follows;

**“Special provisions relating to matrimonial property**

**(1) An estate or interest in any matrimonial property shall not, during the subsistence of a monogamous marriage and without the consent of both spouses, be alienated in any form, whether by way of sale, gift, lease, mortgage or otherwise.”**

15. Regarding jurisdiction and procedure, section 17 of the Act provides for actions for declaration of rights to matrimonial property as follows;

**“Action for declaration of rights to property**

**(1) A person may apply to a court for a declaration of rights to any property that is contested between that person and a spouse or a former spouse of the person.**

**(1) An application under subsection (1)—**

**(a) Shall be made in accordance with such procedure as may be prescribed;**

**(b) May be made as part of a petition in a matrimonial cause; and**

**(c) May be made notwithstanding that a petition has not been filed under any law relating to matrimonial causes.”**

16. Rule 6 of the Matrimonial Property Rules (Legal Notice 137 of 2022) provides for the courts with jurisdiction to determine a matrimonial dispute as follows;

**“6. Court to which application may be made**

**(1) An application to enforce a claim relating to matrimonial property may be made in any proceedings under the Act—**

**(a) To the High Court in any case 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**

**(b) To a magistrate's court having civil jurisdiction to adjudicate matters within the court's pecuniary jurisdiction.**

**(2) Where the spouses profess the Muslim faith, the court to which an application is made may, on the request of the parties, be guided by Muslim law."**

17. Concerning institution of claim on matrimonial property, Rule 7 (4) (e) of the said rules provides for institution of a claim for cancellation of transfer or other disposition of matrimonial property.

18. Therefore, where the question of ownership of matrimonial property is raised, the trial court may need to consider each spouse's contribution. Where a spouse seeks relief for cancellation of title in a disposition by their spouse during the subsistence of the marriage, they ought to file their claim in the Magistrates court, where the value of the subject matter falls within the pecuniary jurisdiction of the Magistrates court and before the High court where the value of the subject matter exceeds the pecuniary jurisdiction of the former.

19. In view of the above cited provisions and more particularly by dint of the provisions of Rules 6 and 7 of the Matrimonial Property Rules 2022, the claim herein being a dispute on matrimonial property rights and the legality of the sale and transfer of the suit property by the 1<sup>st</sup> defendant to the 2<sup>nd</sup> defendant for want of spousal consent, I find and hold that the same is a claim within the jurisdiction of the Magistrates court and or the High court depending on the value of the suit property.

20. Considering the delineation of this court's jurisdiction provided under Article 162 (2) (b) of the Constitution of Kenya as read with section 13 of the Environment and Land Court Act, I find and hold that this court lacks jurisdiction to hear and determine this suit. For that reason, I hereby strike out the plaintiff's suit. As the parties in this matter are related by marriage, I make no order as to costs.

21. It is so ordered.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA  
IN OPEN COURT/VIRTUALLY THROUGH**

**MICROSOFT TEAMS VIDEO CONFERENCING  
PLATFORM THIS 4<sup>TH</sup> DAY OF MARCH, 2026**

**A. NYUKURI**  
**JUDGE**

**In the presence of;**

Mr. Okara for the plaintiff  
No appearance for the defendant  
Court Assistant: Delphine