



**PTM v BW (Environment and Land Case E138 of 2024)
[2026] KEMC 37 (KLR) (15 January 2026) (Ruling)**

Neutral citation: [2026] KEMC 37 (KLR)

**REPUBLIC OF KENYA
IN THE NAKURU LAW COURTS
ENVIRONMENT AND LAND CASE E138 OF 2024
PA NDEGE, SPM
JANUARY 15, 2026**

BETWEEN

PTM PLAINTIFF

AND

BW DEFENDANT

RULING

1. By a plaint dated 20/06/2024, the plaintiff prayed for judgment against the defendant for orders: -
 - a. Orders of injunction restraining the defendant from transferring parcels Kiambugo/ Kiambugo Block 2/11520 and Miti Mingi/Mbaruk Block 1/322 (Ndege) into her name.
 - b. An order restraining the District Land Registrar not to transfer parcels Kiambugo/Kiambugo Block 1/11520 and Miti Mingi/ Mbaruk Block 1/322 (Ndege) until the case is heard and determined.
 - c. An order that the Kikuyu Customary marriage between the plaintiff and the defendant be dissolved.
 - d. That costs be provided for.
2. The defendant was served with summons and plaint and consequently instructed the firm of Mwangi Mandere Advocates who came on record vide Memorandum of Appearance dated 15/07/2024 and also filed her statement of defence of even date.
3. The defendant also raised a Preliminary Objection on a point of law dated 15/07/2024 seeking to have the entire suit struck out with costs on the grounds that: -
 - a. This Honorable Court lacks jurisdiction to entertain this suit by dint of Sections 7 and 17 of the *Matrimonial Properties Act* Cap 152 Laws of Kenya.



- b. This Honorable Court has no jurisdiction over the subject matter properties since they are part of matrimonial property.
- c. The Plaintiff's suit should be struck out with costs.
4. The Preliminary Objection was disposed of by way of written submissions and on 05/11/2024, I agreed with the defendant that this matter ought to have been filed at the High Court except the issue of the dissolution of the Kikuyu customary marriage as per prayer (3) that ought to have been filed in this court. I thus allowed this suit to proceed for the determination of prayer no. 3 only.
5. When the matter came up for hearing on 28/10/2025, neither the defendant nor her advocate was present despite evidence of service of a hearing notice dated 27/06/2025, vide an affidavit of service filed in court on 28/10/2025. The plaintiff thus proceeded ex parte. At the hearing, the plaintiff's witness statement dated 20/06/2024 was adopted as his evidence-in-chief. He further produced his exhibits appearing on the list of documents of even date as PExh. Nos. 1-6. The plaintiff then filed his written submissions and the matter was fixed for a judgment.
6. While preparing the judgment, I just realized that in allowing the proceedings for divorce to continue, I had put myself in an awkward position, as I am now supposed to determine or grant the divorce orders sought for in prayer 3, in an Environment and Land Court Case. This is because this court as presently constituted is an environment and land court and not a family court. I was thus supposed to have agreed with the defendant's Preliminary Objection in its entirety and strike out the entire claim and order that while prayers 1 and 2, may be filed at the High Court; prayer 3, though fileable before a subordinate court, be filed in an appropriate subordinate court in an appropriate cause, invoking the correct jurisdiction of the subordinate court.
7. I thus have no option at this stage, but to down my tools. This cause as filed, constituted this court as an ELC court which has no jurisdiction to hear and determine a matrimonial dispute of whatever nature. I thus do hereby strike off the entire suit, including the remaining prayer number 3, and order that it may be filed in an appropriate forum.
8. The 2/3 costs awarded in the Preliminary Objection are hereby extended to full costs. These costs must be paid in full before a fresh cause is filed in an appropriate forum.

DATED, SIGNED AND DELIVERED AT NAKURU IN OPEN COURT THIS 15TH DAY OF JANUARY, 2026.

ALOYCE-PETER-NDEGE

SENIOR PRINCIPAL MAGISTRATE

In the presence of;

Plaintiff's Counsel: Maina

Defence Counsel: N/A

Plaintiff: N/A

Defendant: N/A

Maina: We can get a copy of the ruling.

CT: The copy of the ruling, a certified one, be supplied to the counsel upon payment of the necessary costs.

