



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Njoroge v Mwaura (Environment and Land Appeal E023 of 2023)  
[2026] KEELC 2746 (KLR) (11 May 2026) (Ruling)**

Neutral citation: [2026] KEELC 2746 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MURANGA  
ENVIRONMENT AND LAND APPEAL E023 OF 2023**

**MN GICHERU, J**

**MAY 11, 2026**

**BETWEEN**

**MARTIN MWAURA NJOROGE ..... APPELLANT**

**AND**

**ANNA WANJIKU MWAURA ..... RESPONDENT**

*(Being an appeal from the Judgment of the Learned Principal Magistrate, Kandara,  
Hon. M. Sudi on 19th October, 2023 in ELC No. E028 of 2022 at Kandara Law Courts)*

**RULING**

1. In the memorandum of appeal dated 16-11-2023, the Appellant is seeking the setting aside of the judgment of the lower Court dated 8-10-2023. In the said judgment, the learned trial magistrate found that the Respondent was entitled to 30% of the value of the L.R. No.Loc.4/Gakarara 1014. The property was to be valued after which the Respondent was to be paid 30% in monetary value or in kind.
2. The Respondent is the estranged wife of the Appellant and had filed the lower Court suit seeking half of the property which included L.R. No.Loc.4/Gakarara/1014 and 789 together with household goods in the matrimonial home. In the end she only got 30% of the value of L.R. No. Loc.4/Gakarara/1014.
3. On 7-7-2025, this Court directed that the notice of preliminary objection dated 20-6-2025 be raised in the Respondent's final submissions so that it could be considered once and for all together with the grounds of appeal so that there was only one judgment. With the benefit of hindsight, I realise that I was wrong. I should have dealt with the preliminary objection in July last year especially because it concerned the jurisdiction of this Court to entertain the Appellant's appeal.
4. There are four grounds upon which the preliminary objection is premised.



- i. The appeal is misconceived, frivolous, vexatious and a clear abuse of the due process of the Court as the Court has no jurisdiction to hear an appeal on matrimonial property cause matters originating from the magistrates court.
  - ii. The appeal is incompetent and fatally defective as it offends rule 33 of the Matrimonial Property Rules, Legal Notice No. 137 of 2022.
  - iii. The appeal is untenable in the eyes of the law and equity.
  - iv. The appeal herein should therefore be dismissed with costs to the Respondents.
5. Counsel for the parties filed written submissions 9-9-2025, 1-10-2025 and 4-11-2025. The issues raised in the submissions are as follows.
  - a. Whether the court has jurisdiction to hear this appeal.
  - b. Whether all land disputes should be heard by the Environment and Land Court.
  - c. Whether the appeal is merited.
  - d. Who is to bear the costs of the appeal.
6. I have carefully considered the appeal in its entirety including the record, grounds, the preliminary objection and the grounds upon which it is based, the written submissions and the law cited therein. I find as follows in regard to the issues as identified and framed by learned counsel for the parties.
7. Regarding the first issue, I find that this court has no jurisdiction to hear and determine this appeal because it is a dispute emanating from the family division of the magistrates court and appeals against the decisions of this division lie to the High Court. I agree with the submission by the learned Counsel for the Respondent that rule 33 of the Matrimonial Property Rules 2022 provides that it is the High Court with jurisdiction to hear appeals emanating from matrimonial property disputes. Secondly, in the case of FHJ vs EAR Civil Appeal No. 108 of 2019, Court of Appeal Nyeri, it was held as follows.

“By parity of reasoning, we find that the ELC erred in finding that it had jurisdiction to hear and determine the suit before it. It is our considered view that the High Court has jurisdiction to declare the rights of parties in relation to any matrimonial property which is contested...

The suit is transferred to the High Court from the ELC where it shall be heard on merits as a matrimonial property dispute.”
8. Having made a determination of that single issue, I find no need to decide the second issue which is subsumed in the finding above.
9. In conclusion and for the reasons given, I strike out the appeal with costs to the Respondent.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 11<sup>TH</sup> DAY OF MAY, 2026.**

**M.N. GICHERU JUDGE.**

Delivered online in the presence of; -

Court Assistant – Antony



Appellant's Counsel – Mr Karuga Wandai

Respondent's Counsel – Miss Wainaina

