



**LWW v MGW (Environment and Land Appeal E039 of 2024)
[2025] KEELC 5926 (KLR) (6 August 2025) (Ruling)**

Neutral citation: [2025] KEELC 5926 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E039 OF 2024**

**JG KEMEI, J
AUGUST 6, 2025**

BETWEEN

LWW APPELLANT

AND

MGW RESPONDENT

(Appeal arises form the decision of the Principal Magistrate Hon. Becky Cheloti delivered on 23/2/24 in MCELC No 244/2023 in Milimani.)

RULING

1. This appeal arises form the decision of the Principal Magistrate Hon. Becky Cheloti delivered on 23/2/24 in MCELC No 244/2023 in Milimani.
2. The Appellant instituted a suit against the Respondent by way of plaint dated 1/7/223 for orders for trespass and eviction of the Respondent from the suit property. It was her case that she purchased the property and the Respondent has denied her access to the suit land.
3. In response the Respondent denied the case of the Appellant and contended that the property is matrimonial property having contributed significantly to the acquisition of the same. The Respondent conceded that although the property is registered in the name of the Appellant the same is held in trust for his benefit on account of joint contribution to its acquisition and development. He further averred that the Appellant simply walked out of the marriage and at no time has she been denied access to the property.
4. Simultaneously, with the filing of the suit, the Appellant filed a Notice of Motion dated 1/8/23 seeking interalia interim injunctive orders barring the Respondent from continuing to use, disposing off by way of sale and or interfering with the suit property.



5. In its decision, the Court stated as follows;

“from the foregoing, the Court finds in determining the ownership of the suit property there is need to first establish whether the suit property is marital property and if it falls within the meaning of Section 14 of the Matrimonial Property Act. this Court is bereft of jurisdiction as the determination as to whether or not the suit property is matrimonial property falls within the jurisdiction of the High Court as provided under section 17 of the said Act.

The Court therefore cannot hear and determine this matter for want of jurisdiction and consequently downs its tools”

6. It is this decision that has triggered the filing of the instant appeal on the grounds that the trial Magistrate erred in striking out the Plaintiffs suit for want of jurisdiction; failed to consider the Matrimonial Property Rules, 2022; misapplied the provisions of Section 14 of the Matrimonial Property Act in as far as holding that it is bereft of jurisdiction is concerned.

7. Consequently, the Appellant sought orders that the entire ruling and the consequential orders issued on 23/2/24 by the Hon Court be set aside and the Appellant suit be reinstated for hearing and determination on merit.

8. Parties have filed written submissions which I have read and considered.

9. The key issue for determination is whether the appeal has merit.

10. As a first appellate Court, this Court has a duty to examine matters of both law and facts and subject the whole of the evidence to a fresh and exhaustive scrutiny, before drawing a conclusion from that analysis. The Court has however to bear in mind the fact that it did not have an opportunity to see and hear the witnesses first hand. This duty is enunciated by Section 78 of the Civil Procedure Act which espouses the role of a first appellate Court which is to: ‘... re-evaluate, reassess and re-analyze the extracts of the record and draw its own conclusions.’

11. Besides, that duty has been affirmed in numerous decisions of the superior Courts. Notably in the case of *Selle & Another vs. Associated Motor Boat Co. Ltd & Others* [1968] EA 123, this principle was pronounced thus:

“...this Court is not bound necessarily to accept the findings of fact by the Court below. An appeal to this Court ... is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put they are that this Court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect...”

12. It is a general principle of law that a Court’s jurisdiction flows from the Constitution, statute or both. The centrality of the concept of jurisdiction in Kenya’s legal system cannot be gainsaid. Nyarangi JA outlined the significance of jurisdiction in the adjudication of civil disputes in *Owners of Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd* [1989] KLR 1 in the following words:

“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the Court seized of the matter is then obliged to decide the issue right away on the material before it. 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 pending other evidence. A Court of law downs its tools



in respect of the matter before it at the moment it holds the opinion that it is without jurisdiction.”

13. The Supreme Court of Kenya pronounced itself on the concept of jurisdiction in *Samuel Kamau Macharia & Anor Vs Kenya Commercial Bank Limited & 2 others* [2012] eKLR 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. We agree with Learned Counsel for the first and second Respondents in his submissions that the issue as to whether a Court of law has jurisdiction to entertain a matter before it is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings. This Court dealt with the question of jurisdiction extensively in the Matter of Interim Independent Electoral Commission (Applicant), Constitution Application Number 2 of 2011. Where *the Constitution* exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a Court of law beyond the scope defined by *the Constitution*. Where *the Constitution* confers power upon parliament to set the jurisdiction of a Court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a Court or tribunal by statute law.”

14. Section 17 of the *Matrimonial Property Act* (No. 49 of 2013) provides for the procedure that is to be followed in determining rights of parties with respect to matrimonial property.

15. The said Section provides as follows:

- “(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.
- (2) An application under subsection
- (1) shall be made in accordance with such procedure as may be prescribed;
- (a) 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. I note that the Act does not define the ‘Court’. In my considered view the framers of the law left this open so as not to limit a party in moving the Court in the three scenarios envisaged, that is to say a party may file ;(1) a petition in a matrimonial cause has been filed (2) The Court with jurisdiction i.e depending on the monetary value of the properties (3) whether or not a matrimonial cause has been filed.

17. Section 6 of the *Matrimonial Property Act* Rules, 2022 provides as follows;

“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.

18. Clearly the Magistrates Court has jurisdiction to determine disputes arising from matrimonial property either alongside divorce proceedings and or proceedings for the division of property either in the marriage or after the dissolution of the same. The only limiting factor is the pecuniary jurisdiction of the Court.
19. Section 7 of the Magistrates Act provides for the Civil Jurisdiction of a Magistrate's Court. The highest jurisdiction is that of a Magistrate which is twenty million, Senior Principal Magistrate is fifteen million, Principal Magistrate, ten million, Senior Resident Magistrate seven million and five million for a Resident Magistrate.
20. It therefore follows that a Magistrate who is seized of a matrimonial cause will have jurisdiction to determine a dispute under the Matrimonial Property Act based on his/her monetary Civil Jurisdiction.
21. A clear perusal of the Complaint does not disclose the value of the suit property. However, among the supporting documents supporting her claim the Appellant annexed a sale agreement dated the 11/11/2011 in which discloses the consideration of the suit land measuring 0.4047 or one acre at [Particulars Withheld] Farm (Kamulu). Going by the disclosed amount therefore and in the absence of a current valuation stating otherwise, it is my finding that the pecuniary jurisdiction of the suit land falls within the jurisdiction of the Magistrate Court.
22. The learned Magistrate reached her decision on the provisions of Section 14 of the Matrimonial Properties Act and proceeded to down its tools. This Section provides as follows;

“Where matrimonial property is acquired during marriage— (a) in the name of one spouse, there shall be a rebuttable presumption that the property is held in trust for the other spouse; and (b) in the names of the spouses jointly, there shall be rebuttable presumption that their beneficial interests in the matrimonial property are equal.”
23. I have considered the context of the above provisions which speaks to a rebuttable presumption that a property is held in trust for one spouse even when the title is registered in the name of another spouse or where the same is registered jointly. I fail to find any rationale that would inform the downing of tools by the trial Court. I find that the trial Magistrate erred in so determining that it had no jurisdiction on account of this provision.
24. Final Orders for Disposal
 - a. In the end I find that the appeal has merit. It is allowed as follows;
 - b. The entire ruling and the consequential orders issued on the 23/2/24 delivered by the Hon Court be set aside and the Appellant's suit be reinstated for hearing and determination on its merit.
 - c. Each party to bear the costs of the appeal.
 - d. The suit to be heard by another Magistrate with jurisdiction other than Hon Becky Cheloti.
25. Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 6TH AUGUST, 2025 VIA MICROSOFT TEAMS.



J. G. KEMEI

JUDGE

Delivered Online in the Presence of:

Mr. Mathenge for the Appellant

NA for the Respondent

CA- Ms. Yvette Njoroge

