



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT KITALE
LAND CASE NO. 130 OF 2012 (OS)
(Formerly Bungoma H.C.C.C No. 112 of 2010 (OS))
A N W.....APPLICANT
VERSUS
M W.....RESPONDENT

R U L I N G

1. The Plaintiff and the defendant are husband and wife respectively. The two married in 1968. They acquired a property known as [particulars withheld] measuring 10 acres. They set up their matrimonial home on the said property. The defendant married a second wife. The relationship between the plaintiff and defendant was strained. In 1994 the defendant chased away the plaintiff from the matrimonial home. The plaintiff later filed an originating summons seeking a share of the matrimonial property.
2. On 30/11/2011 the defendant filed a notice of preliminary objection to the plaintiff's originating summons on the ground that the court lacked jurisdiction to hear and determine the matter. The preliminary objection was not argued then because the parties attempted to settle the matter out of court. When the negotiations stalled, the parties agreed to take up the preliminary objection. The parties agreed to dispose of the preliminary objection through written submissions. The defendant filed his submissions on 11/3/2015 and the plaintiff filed her submissions on 10/4/2015.
3. I have gone through the defendant's submissions and see nowhere where the defendant has indicated how the court does not have jurisdiction to deal with the matter. The defendant has instead dwelt on the issue of competency of the originating summons. Competence of an originating summons is not an issue of jurisdiction. The defendant is questioning the provisions under which the originating summons is brought. He is even raising the issue on whether a married Bukusu woman is allowed to own property. These are not issues related to jurisdiction.
4. Because the defendant did not raise any jurisdictional issues, the plaintiff in her submissions has also submitted on why the originating summons should not be struck out. The issue herein was whether the court has jurisdiction or not. It was not about the competency of the originating summons. I do not find any merit in the preliminary objection. The same is hereby dismissed with costs to the plaintiff.

It is so ordered.

Dated, signed and delivered at Kitale on this 22nd day of April, 2015.

E. OBAGA

JUDGE

In the presence of Mr Wafula for Mr Katama for defendant. Court Clerk – Kassachoon.

E. OBAGA

JUDGE

22/04/2015