



**Jeptanui v Kibomet (Enviromental and Land Originating Summons  
E007 of 2023) [2024] KEELC 3674 (KLR) (9 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 3674 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E007 OF 2023**

**EO OBAGA, J**

**MAY 9, 2024**

**BETWEEN**

**CLARA JEPTANUI ..... APPLICANT**

**AND**

**KIPTOO TARUS KIBOMET ..... RESPONDENT**

**RULING**

1. This is a ruling in respect of a preliminary objection dated 7.12.2023 brought by the Respondent and a Notice of motion dated 23.11.2023 brought by the Applicant.
2. The Preliminary objection is brought on the following grounds: -
  1. That this honorable court lacks the requisite jurisdiction to hear and determine the suit herein which has been framed as division of Matrimonial property suit.
  2. That the suit herein is not ripe and justifiable for the jurisdiction of this Honourable court to be invoked and the Respondent shall be relying on the legal doctrine of Ripeness and justiciability.
  3. The notice of motion seeks the following orders:-
    1. Spent
    2. Spent
    3. That temporary injunction order do issue against the Respondent restraining him, its agents, and/or his servants, from selling, fencing off, charging, transferring or in any way disposing off or interfering with the plaintiff's rights and ownership of Land Parcel known as TUrbo East/leseru Block 2 (kosaji)/119 pending the hearing and determination of the main suit.
    4. That costs of this application be provided for.



4. The Applicant is wife to the Respondent. The couple together with their children reside on LR No Turbo East/Leseru Block 2 (Kosaji) 119 measuring 5.440 hectares (suit property). The Respondent without consent of the Applicant sold portions of the suit property. This is what prompted the Applicant to file an Originating summons in which she claims that the Respondent holds the suit land in trust for her and their children.
5. The Respondent filed a notice of preliminary objection in which he contends that this court has no jurisdiction to entertain this suit as what the Applicant is seeking is division of matrimonial property and that the dispute herein is not ripe and justiciable.
6. The parties were directed to file written submissions in respect of both the preliminary objection and the Notice of motion which were to be heard together. The Respondent neither filed a replying affidavit nor grounds of opposition to the Applicant's notice of motion. The Respondent did not file submission in respect of both the preliminary objection or Notice of motion. It is only the Applicant who filed submissions in respect of the preliminary objection. No submissions were filed in respect of Notice of motion.
7. The Applicant relied on the case of *Mukisa Bisuit Manufacturing Co. Ltd v West End Distributors* (1969) EA 696 which defines what constitutes a preliminary objection.
8. The Applicant also relied on the case of *Wanjiku Gikonyo & others v National Assembly of Kenya & 4 others* Constitutional Petition No 453 of 2015 (2016) eKLR where Justice Onguto held as follows:-

“Effectively, justiciability dogma prohibits the courts from entertaining hypothetical or academic interest case... the court is prevented from determining an issue when it is too early or is simply out of apprehension, hence the principle of ripeness, an issue before the court must ripen through a factual matrix for determination.”
9. The first issue to be decided is whether this court has jurisdiction to entertain this suit. The Applicant is contending that the Respondent is holding the suit property in trust for her and her children. She is also saying that she was not consulted to give her spousal consent to the disposal of part of the suit property. The Applicant is not claiming that the suit property be shared between her and the Respondent. The claim by the Applicant falls under *Land Registration Act* which provides for her overriding interest in the suit property. This court has therefore jurisdiction to entertain the suit.
10. The other issue is whether the suit is ripe and justiciable. It is clear from the averments in the supporting affidavit to the Applicant's application that part of the suit property has been fenced off. There are photographs which shows a newly erected barbed wire fence. This clearly is threat to the overriding interest of the Applicant and therefore she is at liberty to bring up the suit. I therefore find that the preliminary objection lacks merit. The same is dismissed with no order as to costs as the parties herein are a couple.
11. On the issue of injunctive orders, the application by the Applicant is unopposed. The Applicant has demonstrated that the suit property has already been fenced by the purchasers. The Respondent is also harassing his own sons who are protesting the sale. The Applicant has demonstrated that she has a *prima facie* case with probability of success. She is entitled to injunctive orders. I therefore grant prayer (3) of the Notice of motion with no order as to costs as the parties are a couple.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 9<sup>TH</sup> DAY OF MAY, 2024.**

**E. O. OBAGA**



## **JUDGE**

In the virtual presence of;

Mr. Kipkoech for M/s Lelei for Plaintiff.

Mr. Godia for Defendant.

Court Assistant –Laban

