



**AWG v DNK & another; Gichaga (Interested Party) (Environment & Land
Petition 4 of 2022) [2024] KEELC 6402 (KLR) (26 September 2024) (Ruling)**

Neutral citation: [2024] KEELC 6402 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND PETITION 4 OF 2022
LN MBUGUA, J
SEPTEMBER 26, 2024**

BETWEEN

AWG PETITIONER

AND

DNK 1ST RESPONDENT

CRESCENT VIEW HOLDINGS LTD 2ND RESPONDENT

AND

DANIEL MAHIRI GICHAGA INTERESTED PARTY

RULING

1. The Petitioner’s application dated 13.5.2024 is for determination seeking orders that this suit be transferred to the family division of the High court for hearing. The application is premised on grounds on its face and on the supporting affidavit sworn on 13.5.2024 by David Njeru Nyaga, counsel for the petitioner. He avers that the suit concerns the possession and occupation of matrimonial property owned by the 2nd Respondent and that since the 1st Respondent is deceased, the matter is being handled by his personal representatives.
2. He further avers that the Petitioner is a director of the 2nd Respondent thus it would be constructive to address the issues concerning parties’ rights to occupation of the suit property in the family court.
3. The application is also supported by the Petitioner’s supplementary affidavit sworn on 13.7. 2024. She avers that she purchased Nairobi Block 1x0/1x with her now deceased husband (1st Respondent) in 1999, and the land was transferred to her husband on 30.6.2000, that they constructed their home thereon and moved in the said home in the year 2002.



4. She avers that since filing the petition, a lot has changed. She points out that her deceased husband and the interested party established a relationship which led them to do things behind her back and which she discovered after his death.
5. The application is opposed by the Interested party *vide* his replying affidavit sworn on 27.6.2024 where he avers that he is a director and a majority shareholder of the 2nd Respondent. He contends that this petition was first filed in the year 2021 in the Human Rights Division, and for lack of jurisdiction, it was transferred to the registry for reallocation. That thereafter, the Petitioner caused it to be brought before the Environment and Land Court.
6. He avers that this court has jurisdiction to dispose the matter since the property in dispute is owned by the 2nd Respondent where the Petitioner holds 30% shareholding. He argues that a minority shareholder cannot in good faith purport to change a company into a family affair while the majority shareholder retains his 70% shareholding.
7. I have considered all the arguments raised herein including the rival submissions. The issue for determination is whether this suit should be transferred to the family division of the High Court on the basis that the subject property is matrimonial property.
8. This court's jurisdiction is derived from Article 162 (2) and (3) of the *Constitution* of Kenya and Section 13 (2) of the *ELC Act No. 19 of 2011* which gives it the mandate to hear and determine disputes relating to use, occupation of and title to land.
9. I take cognizance of the fact that this matter was filed in the High Court, whereby Judge A. C. Mrima substantively dealt with the question of jurisdiction over this matter. While applying the pre-dominant purpose test in his ruling dated 27.1.2022, the Judge held thus;

“From the guidance of the Court of Appeal in the Co-operative Bank of Kenya Limited case (*supra*) and the above analysis, there is no doubt that the matter relates to the occupation of land and the High Court cannot exercise any jurisdiction.”
10. No appeal was ever lodged in respect of the said ruling and this court cannot therefore purport to interrogate the question of jurisdiction all over again.
11. Needless to state that from the pleadings, the dispute is over the property known as Nairobi Block 1x0/1x. Thus whereas the Petitioner correctly argues that this court has no mandate to enter into the arena of divisional of matrimonial property, she is misconceived as to what this petition is all about.
12. In *BWM v JMC* [2018] eKLR the court stated as follows in a similar set up;

“Much as the Plaintiff purports to seek a declaration in her final prayers that the suit land be declared a matrimonial property, the substratum of the dispute at hand is ownership of the suit land. Having found that the suit land has a certificate of title registered in the name of the Defendant which the Plaintiff seeks to impair by claiming ownership of the suit land on account of the alleged developments, that places the case squarely in the jurisdiction of the *ELC Act* and consequently the ELC Court.”
13. While the Petitioner now claims that there are new developments in the mater which call for a transfer of the suit to the family division, pleadings have not been amended. The position as at when Hon. Judge Mrima rendered his ruling is still the same. In the circumstances, I find that the application dated 13.5.2024 is not merited, the same is hereby dismissed with costs to the interested party.



DATED, SIGNED AND DELIVERED AT NAIROBI THIS 26TH DAY OF SEPTEMBER, 2024
THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

