



AWN v JNM (Civil Case 31 of 2019) [2025] KEHC 9198 (KLR) (Civ) (26 June 2025) (Ruling)

Neutral citation: [2025] KEHC 9198 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
CIVIL CASE 31 OF 2019
HK CHEMITEI, J
JUNE 26, 2025

BETWEEN

AWN APPLICANT

AND

JNM RESPONDENT

RULING

1. The Plaintiff filed the suit herein dated 30th May 2019 in which she sought among others division of the matrimonial properties situate at Dagoretti/Kangema/489.
2. The Respondent filed a response as well as a preliminary objection dated 28th June 2024 stating that:-
 - (a) The court lacked jurisdiction to entertain the suit for want of divorce decree.
 - (b) That the suit cannot stand for want of compliance with section 7 of the [Matrimonial Property Act](#) 2013.
3. Consequently, he prayed that the suit be dismissed.
4. The court directed the parties to file submissions which the court has perused. It was the contention of the Applicant that in the absence of a decree dissolving the marriage the court cannot be able to deal with the suit. He cited section 7 of the [Act](#).
5. The Respondent on the other hand argued that the court could still make declarations in the absence of the divorce decree. She cited several authorities to back up her claim.
6. I have perused the submissions by the parties and the relevant authorities relied upon.



7. The two often cited authorities on preliminary objection and jurisdiction namely *Mukisa Biscuits Manufacturing Ltd v. West End Distributors* EA 696 and *Owners of Motor Vessel Lillian S v. Caltex* 1989 KLR 1 has been cited by the parties.
8. Section 7 of the *Matrimonial Property Act* 2013 stands as hereunder:-

“Subject to Section 6 (3), ownership of matrimonial property vests in the spouses according to the contribution of either spouse towards its acquisition and shall be divided between the spouses if they divorce or their marriage is otherwise dissolved.”
9. My understanding of the above portion of the law presupposes that the distribution of matrimonial property shall only be affected once the divorce question has been settled. I think this is for a good measure because the parties to the extent that they are still married will always consider the properties common.
10. In the divorce cause therefore, they shall each stand to prove the ownership and acquisition of the matrimonial assets which were obtained during the coverture.
11. In the case at hand the divorce cause has not been determined meaning effectively that section 7 cited above cannot aid the Respondent.
12. The prayers which are asked by the Respondent are to do with some declarations and injunction pending the formal determination of the Divorce Cause No. 360 of 2019.
13. Whichever way one looks at it I think the Respondent is not asking the court to deal with the provisions of section 7 of the *Act* above but to preserve the properties. At the appropriate time she will seek to adduce evidence in compliance with the *Matrimonial Property Act*.
14. In the case of *AKK -vs- PKN* [2020] eKLR, the Court of Appeal stated as follows:-

“A plain reading of Section 17 enables a spouse, subsistence of marriage notwithstanding, to make an application for declaratory orders. It further states that that application may be made as part of a petition in Matrimonial Cause and notwithstanding that a petition has not been filed under any law relating to matrimonial causes. It is our opinion that the divorce cause does not prevent a party from bringing an action for declaration of rights to property in the High Court under Section 17 of the Act”.
15. The above often cited authority is in all fours with the matter at hand.
16. I think it is fair to argue and also find that the substratum of this cause is twofold, the issue of declaration and status quo and ultimately the distribution of the property once the divorce decree is issued.
17. As it stands now the preliminary objection cannot succeed and the same is hereby dismissed with no order as to costs.

DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAIROBI THIS 26TH DAY OF JUNE 2025.

H K CHEMITEI
JUDGE

