



REPUBLIC OF KENYA



**KENYA LAW**  
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**AAO v NOO (Divorce Appeal E009 of 2024)  
[2025] KEHC 11339 (KLR) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11339 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
DIVORCE APPEAL E009 OF 2024**

**A MABEYA, J  
JULY 31, 2025**

**BETWEEN**

**AAO ..... APPELLANT**

**AND**

**NOO ..... RESPONDENT**

*(Being an appeal from the ruling and order of Hon. D.O. Onyango  
CM delivered on the 16/10/2024 in Kisumu Divorce Cause No.  
E035 of 2024, Angela Atieno Obino v Nixon Odhiambo Okello)*

**JUDGMENT**

1. The appellant petitioned the trial court vide her petition dated 21/5/2024 seeking a divorce from the respondent on grounds of cruelty and adultery.
2. The respondent filed a response dated 12/6/2024 and further raised a preliminary objection of the even date that the trial court lacked territorial jurisdiction to entertain the said petition.
3. In its ruling delivered on 11/9/2024, the trial court upheld the preliminary objection by the respondent and proceeded to strike out the petition with no orders as to costs.
4. Being dissatisfied with the said ruling/order, the appellant lodged this appeal vide the Memorandum of Appeal dated 30/10/2024 and raised three (3) grounds of appeal as follows: -
  - a. The learned magistrate erred in law and fact by equating domicile with residence thereby incorrectly concluding that the Kenyan court lacks jurisdiction based on the parties' residence in the United States of America.
  - b. The learned magistrate erred in law by allowing a preliminary objection despite disputed facts regarding the parties' domicile, which required full adjudication and could not be properly determined as a pure point of law.



- c. The learned magistrate erred in law by relying on Section 67 of the *Marriage Act*, 2014 to support foreign jurisdiction without adequately considering Kenyan legal principles on matrimonial jurisdiction.
5. From the record, the appeal was to be disposed off by written submissions. The appellant submitted that the issue of domicile was not a point of law to be resolved as a preliminary point as the issue is a mixed question of law and fact that can only be adequately determined through oral evidence and cross-examination.
  6. The respondent on his part submitted that the appeal is fundamentally defective as the Memorandum of Appeal is not supported by a proper record of appeal as ordered by the trial court and as provided by Order 42 rule 13 (4) of the Civil Procedure Rules 2010.
  7. That domicile and residence are closely related concepts often overlapping in matrimonial law and that courts have established that Kenyan courts may only exercise matrimonial jurisdiction where at least one of the parties is domiciled within Kenya.
  8. I have carefully considered the appeal before this Court as well as the written submissions filed by both parties. As a first appellate Court the duty of this court is to re-examine and review the arguments presented in the lower court and to draw its own conclusions on the same. [see *Selle & Another v Associated Motor Boat Co Ltd* [1968] E.A 123].
  9. The first issue for determination is the competency of the appeal. The respondent contended that there was no competent appeal as no record of appeal was filed as directed by the Court. I have considered the record and have noted that there is a Record of Appeal dated 7/5/2025 that was lodged in Court as ordered. Accordingly, that objection is without merit and is dismissed and that paves the way for the appeal to be considered on merit.
  10. A Preliminary Objection must raise a pure point of law [see *Mukhisa Biscuit Manufacturing Co Ltd v Westend Distributors Ltd* [1969] E.A.] It is one which upon determination may dispose of the entire suit. It is one that is raised on the basis that the facts are agreed and are not to be ascertained.
  11. The grounds of appeal can be collapsed into one; that the trial court in upholding the preliminary objection which was not a preliminary objection in law.
  12. It is trite that jurisdiction is everything and that without requisite jurisdiction, a court must immediately down its tools [see *Owners of Motor Vessel Lillian ("S") v Caltex Oil (K) Limited* (1989) KLR]. In the present case, the trial court found that in view of the fact that the parties herein had been residents of the USA for about 10 years, the Kenyan court did not have jurisdiction over the matter.
  13. The appellant argued that the trial court erred in equating domicile with residence thus arriving at a wrong decision while the respondent argued that in matrimonial matters the two, domicile and residence, are closely related.
  14. In personal matters, such as marriage, domicile is critical. Domicile is all about residency. Halsbury's Laws of England (3<sup>rd</sup> Edition 2017 P. 15 Paragraph 28 states of domicile as follows: -

“Domicile of choice is acquired by the actual removal of an individual to another country accompanied by his “animus manendi” ... Any person not under disability may at any time change his existing domicile and acquire for himself a domicile of choice by the fact of residing in a country other than that of his domicile of origin with intention to continue to reside there indefinitely.”



15. Similarly, the Oxford Dictionary Of Law defines ‘Domicile’ as follows; -

“The country that a person treats as his permanent home and to which he has the closest legal attachment. A person cannot be without domicile and cannot have two domiciles at once ... A domicile of choice is acquired by making a home in a country with the intention that it should be permanent base”.

16. From the above, it is evident that domicile and residence are closely related concepts when it comes to matrimonial matters.

17. The law of domicile plays an important role in the determination of whether or not the court to which a dispute has been presented has jurisdiction. Crucially, the court will only have jurisdiction over a suit for dissolution of marriage where the parties have been domiciled within the jurisdiction of that court for the period allowed by the relevant law.

18. The *Marriage Act*, No. 4 of 2014, does not have clear provisions of the domicile of parties seeking dissolution of marriages in Kenya. The only reference in the Act to domicile is to be found in section 67 which provides as follows: -

“Where a foreign court has granted a decree in matrimonial proceedings whether arising out of a marriage celebrated in Kenya or elsewhere, the decree shall be recognized in Kenya if-Either party is domiciled in the country where that court has jurisdiction or had been ordinarily resident in Kenya for at least two years immediately preceding the date of institution of proceedings; Being a decree of annulment, divorce or separation, it is effective in the country of domicile of the parties or either of them.”

19. The jurisdiction of the Family Court to entertain a Divorce Cause largely revolves around the issue of ‘domicile’.

20. I do find that the issue raised in the respondent’s Notice of Preliminary Objection dated 12/6/2024 being an issue of ‘jurisdiction’ was a pure point of law which could when decided upon determine the entire suit.

21. In this case, the appellant pleaded that both she and the respondent are resident and work for gain in the USA. In his response, the respondent admitted that fact. It is therefore clear that both the appellant and respondent have selected the USA as their place of domicile.

22. In *MNM v PNM* [2016] eKLR, Musyoka J held as follows: -

“In personal matters, such as marriage, domicile is critical. Domicile is all about residency. The law of domicile plays an important role in the determination whether or not the court to which a dispute has been presented has jurisdiction. Crucially, the court will only have jurisdiction over a suit for dissolution of marriage where the parties have been domiciled within the jurisdiction of that court for period allowed by the relevant law... the jurisdiction of a family court to entertain divorce cause is therefore guided by the law of domicile ...

Whether a court before which such matter has been placed competent to handle it will depend on whether the parties or either of them have been resident within the jurisdiction of that court for the period stipulated by the relevant law. In this case the parties had been resident in the USA for about ten years. No doubt the US court would have jurisdiction in a marital matter in the circumstances.”



23. From the facts of this case, it is quite clear that the country of domicile for both parties is USA. The Kenyan court will have no jurisdiction as the acts complained of were committed in the USA where the parties are domiciled. I uphold the trial court's finding that it lacked jurisdiction to entertain the divorce petition.

24. In the premises, the appeal has no merit and is hereby dismissed with costs.

It is so decreed.

**DATED and DELIVERED AT KISUMU THIS 31<sup>ST</sup> DAY OF JULY, 2025.**

**A. MABEYA, FCI Arb**

**JUDGE**

