



**JMK v HWM (Matrimonial Cause E004 of 2024)  
[2024] KEHC 4440 (KLR) (30 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4440 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
MATRIMONIAL CAUSE E004 OF 2024**

**HM NYAGA, J**

**APRIL 30, 2024**

**BETWEEN**

**JMK ..... APPLICANT**

**AND**

**HWM ..... RESPONDENT**

**RULING**

1. The Plaintiff herein filed this cause seeking orders over various properties said to be matrimonial property. Amongst the property in issue is an account held at Kenya Commercial Bank, Nakuru.
2. The court issued interim orders to preserve the property described as matrimonial property.
3. As regards the Bank Account, the court ordered the Bank to furnish it with any order that froze the same, which is an account whose signatories are the parties herein.
4. When the respondent appeared in court, she pointed out that there exists High Court Civil Case Number E004 of 2023 between herself and the Applicant herein, in which the subject matter is the same account that the Applicant has sought orders in.
5. I called for the other court file to the said High Court Civil Case Number E004 of 2023 and upon perusal, it is clear that the subject matter is indeed the same account. The only difference is that the respondent is the one who sought orders over the same account and in this case it is the reverse.
6. Section 6 of the *Civil Procedure Act* provides that;

“No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under



the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.”

7. The rationale behind this provision of the law is to prevent the possibility of conflicting orders emanating from different courts over the same subject matter.
8. It is clear that the Bank Account in question is part of the property that the applicant seeks to be determined as matrimonial property.
9. In the other suit, the respondent has sought to have the restriction on the sad account lifted.
10. The test for whether a matter is sub judice is whether on a final decision being reached in the previous instituted suit, such decision would operate as res judicata in the subsequent suit (see *Republic v Paul Kihara Kariuki and 2 others Ex-parte The Law Society of Kenya* 2020 eKLR).
11. Ordinarily, the proper course to take is to stay the subsequent suit and have the previously instituted suit proceed.
12. In this instance, the subsequent suit entails a wider subject matter over and above the Bank Account in question and even the Business operated by the parties.
13. Is it then proper to stay the entire subsequent suit? Or should the court stay the aspect of the subject matter covered by the previous suit.
14. The issues I have to grapple with are to consider what to do since the subsequent suit as drawn consists of subject matters that are over and above the subject matter in the previous suit.
15. Thus, a determination of the previously instituted suit would not determine all the issues in the subsequent suit. It follows that the subsequent suit cannot be stayed wholly. It would also be a strange situation where the court orders a stay of part of the suit in the subsequent matter.
16. For the foregoing reasons, I think that the best course to take is to have the 2 suits consolidated. No substantive orders have been issued in the previous suit that may be in conflict with any orders issued in this suit. That way, the same court will determine all the issues, including those relating to the business and the account in question which are common in both suits.
17. There, in order to expedite the two matters and have uniformity, I order that the 2 suits be consolidated.
18. Now, as regards the Bank Account in question, there is a pending application in the previously instituted suit, dated 27<sup>th</sup> February 2023 and another in the subsequent suit, coincidentally, dated 27<sup>th</sup> February, 2024. I am of the view that the parties then ought to address the court on both applications.
19. I thus direct that the parties to proceed to have both applications argued together.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 30<sup>TH</sup> DAY OF APRIL, 2024.**

**H. M. NYAGA,**

**JUDGE.**

In the presence of;

Court Assistant Kipsugut

Mr. N. Njoroge for respondent

Mr. K. Mbugua for applicant

Mr. Ojou for KCB

