

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

MATRIMONIAL CAUSE NO. 1 OF 2021

LWN.....APPLICANT

VERSUS

IMM.....RESPONDENT

RULING

1. What I am called upon to determine is the Motion, dated 22nd July 2021, which seeks a variety of interlocutory reliefs, pending hearing and determination of the suit.
2. These are matrimonial proceedings, for division of matrimonial property, initiated on 22nd July 2021, by way of an originating summons.
3. The application was placed before Farah Amin J on 22nd July 2021, and temporary orders were granted. Directions were given on 3rd August 2021, for the canvassing of the application by way of written submissions. When the matter was mentioned on 30th September 2021, none had been filed, and none were placed before me, and so I reserved the matter for ruling, to be delivered on 4th February 2022. On 4th February 2022, the ruling was not ready.
4. In the course of preparing the ruling, I have established that the originating pleading, being the originating summons on record, is not signed by the Advocates who drew and filed it, neither is it dated. Execution of pleadings goes to the core of their existence. It authenticates them. Lack of execution invalidates them. As it is, the suit, as it stands, is dead on in water. It was dead on arrival. In simple terms there is no suit.
5. I am inclined to strike out the pleading, which would result in the striking out of the entire suit. That is what I shall do. The undated and unsigned originating summons, filed herein on 22nd July 2021, is hereby struck out. As a consequence, the entire suit is hereby struck out for incompetence, for it cannot stand without the primary pleading. There shall be no order as to costs.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 18TH OF FEBRUARY, 2022

W. MUSYOKA

JUDGE

Mr. Erick Zalo, Court Assistant.

Mr. Matete, instructed by Messrs. Matete Mwelese & Co. Advocates, for the applicant.

Issa Mulimba Matala, respondent, in person.