



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA**

**AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Suit 32 of 2009**

**E.A.O..... PETITIONER**

**V E R S U S**

**D.O.N..... RESPONDENT**

**R U L I N G**

Before me is a Chamber Summons dated 28<sup>th</sup> September, 2009 filed by M/s Sijeny & Company advocates for the petitioner/applicant named as **E.A.O.** The respondent is named as **D.O.N.** The application has 6 prayers. It was said to be filed under the Married Women's Property Act of 1882 and Order XXXIX Rule 1(b), 3 and 9 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act (**Cap. 21**).

The application was filed with a supporting affidavit sworn by the applicant on 28<sup>th</sup> September, 2009. It was deposed in the supporting affidavit, inter alia, that the applicant and the respondent were married at Nakuru on 27<sup>th</sup> April, 1991 under the African Christian Marriage and Divorce Act (Cap. 151), and that they had two issues of the marriage born in 1992 and 1998. It was also deposed that there was a case in the Children's Court No. [.....] as well as a Divorce Cause at Milimani No. [.....] pending. It was also deposed that the applicant was a cancer patient and had identified a buyer for the matrimonial property. It was also deposed that the children need financial assistance or support.

A memorandum of appearance was on 12<sup>th</sup> November, 2009 filed by M/s A.N. Ndambiri & Company advocates for the respondent. However no response was filed by or on behalf of the respondent.

On the hearing date, only Ms. Sijany for the applicant was present in court, though the date was taken on 12<sup>th</sup> November, 2009 in the presence of Mr. Ngaira for the respondent.

The application is not opposed. However, I will not grant the prayers sought. I will not do so because firstly, it is clearly stated in the application that the property Kiambaa Muchatha[.....] is registered in joint names. It cannot be prudent for the court to order sale of a property whose interests is subject to be determined by the court, between contending parties. Secondly I find no basis for having the proceeds of the sale being deposited in the bank account of an advocate for one of the parties. In my view, this application is premature. What should happen is the fast racking of the hearing of the main motion herein to determine the interest of the parties before one can talk of disposal of the asset or assets subject of the dispute.

I therefore decline to grant the orders sought. In effect the application is dismissed.

If the applicant wants to have the main motion heard expeditiously, an appropriate certificate of urgency giving the reasons has to be filed for consideration by the court.

It is so ordered.

Dated and delivered at Nairobi this 23<sup>rd</sup> day of March, 2010.

**George Dulu**  
**Judge.**