



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**Divorce Cause 35 of 2007**  
**AML.....PETITIONER**

**VERSUS**

**AG.....RESPONDENT**

**RULING**

This is an application to strike out the petition or stay proceedings. The respondent further prays that service of the petition be declared null and void. The application is brought under Section 8 of the Matrimonial Causes Act, Rules 4, 5, 6, 7, 9, 10 and 13 of the Matrimonial Causes Rules and Order 9 (1) of the Civil Procedure Rules and all other enabling provisions of the Law.

The application is premised on the grounds that the Petition contravenes the provisions of the Matrimonial Causes Act and Rules and that no Notices as required by the Rules have been served. There is a Memorandum of Appearance under Protest filed under Rule 13 (e) of the Matrimonial Causes Rules. There are various grounds for the appearance under protest which challenge the form, competence and service of the petition.

Upon being served with the application the Petitioner failed to file any reply, grounds of opposition or any form of response. In the event the application is not opposed.

On the basis of the reasons set out by respondent in the Appearance filed Under Protest (Rule 13 (2)), I am satisfied that the Petition is incompetent and the respondent is entitled to the orders she seeks. Accordingly the Petition is struck out with costs.

It is so ordered.

**DATED AND DELIVERED AT MOMBASA THIS 7<sup>TH</sup> DAY OF JUNE 2010.**

**F. AZANGALALA**

**JUDGE**

Read in the presence of:-

Chakera for the Respondent.

**F. AZANGALALA**

**JUDGE**

**7<sup>TH</sup> JUNE 2010**