



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**LAND AND ENVIRONMENTAL LAW DIVISION**

**CIVIL SUIT NO.3699 OF 1983**

**PHOEBE WANGUI KAMORE.....PLAINTIFF**  
**VERSUS**  
**JAMES KAMORE NJOMO.....DEFENDANT**

**R U L I N G**

1. By a notice of motion dated 29<sup>th</sup> April, 2010, James Kamore Njomo, who is the defendant in this suit seeks an order for the court to nominate a independent valuer to value property known as LR No. Nairobi/Block 32/26 in accordance with the order made by the Court of Appeal on 31<sup>st</sup> March, 2000 in Civil Appeal No.63 of 1998. An order attached to the applicant's supporting affidavit shows that the Court of Appeal gave orders inter alia that:  
*The property registered as L.R. Nairobi/Block 32/26 situated in Golf Course Estate within Nairobi jointly owned by the appellant and the respondent in shares of 40:60 and that the property be valued by an independent valuer to be agreed upon between the appellant and the respondent, and in the absence of such agreement the superior court may nominate such valuer, and either party be at liberty to buy out the share of the other party.*
2. The defendant/applicant contends that his proposal for a valuer to be agreed upon has not elicited any response from the plaintiff.
3. In response to the application, the plaintiff swore a replying affidavit sworn on 13<sup>th</sup> September, 2010. The plaintiff objects to the application contending that it is brought in bad faith without disclosing material facts. The plaintiff/respondent maintains that the defendant has been enjoying the proceeds from rent of the suit premises. The plaintiff/respondent further maintains that the matter is one for the family division of the High Court and therefore ought not to have been dealt with in the Environment and Lands Division of the High Court.
- 4 I have given due consideration to this application. I have also taken into account what has been stated by the respective parties in their affidavits. In my considered view, the order made by the Court of Appeal is very clear. The parties were given an opportunity to agree on a valuer for valuation of LR No. Nairobi/block 32/26. It is evident that almost 8 years later, the parties do not appear to have agreed on the valuer to be appointed. In her replying affidavit, the plaintiff/respondent has raised issues pertaining to the propriety of the order made by the Court of Appeal.
5. Nevertheless, it is not within the jurisdiction of this court to question the propriety of the order of the Court of Appeal. The plaintiff/respondent ought to have made an appropriate application to the Court of Appeal if she was dissatisfied with the order. As long as the orders have not been set aside, this court is bound to comply with the orders. As to the complaint that this matter ought to have been dealt with in the family division of the High Court, although the plaintiff brought this application under Section 17 of the Married Women's Property Act, 1882, the suit was filed in the High Court Civil Division as a Civil Suit. I therefore find no substance in that complaint.
6. I grant the defendant's application and issue orders in terms of prayer (i) of the notice of motion dated 29<sup>th</sup> April, 2010. I further order that the parties shall share the costs of the valuer and that each party shall bear his own costs in regard to this application.

**Dated and delivered this 11<sup>th</sup> day of October, 2010**

**H. M. OKWENGU**

**JUDGE**

In the presence of: -

The plaintiff/respondent present in person

Njongoro for the defendant/applicant

B. Kosgei - Court clerk