



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Suit 12 of 2006 (OS)

IN THE MATTER OF THE MARRIED WOMEN'S PROPERTY ACT, 1882 SECTION 17

LUCY NJERI NJOGU..... APPLICANT

VERSUS

JOSEPH NJOGU NGOYA..... RESPONDENT

RULING

By Chamber summons dated 20.02.07 stated to be brought under Order IXB of the Civil Procedure Rules and section 3A of the Civil Procedure Act, Cap.21, the applicant applied for the following orders:-

1. That the instant matter be certified as urgent and heard *ex-parte* in the first instance with the court giving an early *inter-partes* hearing date.
2. That the honourable court be pleased to set aside the orders issued on 11.12.06 and to reinstate the suit herein.
3. That the costs of this application be provided for.

The grounds on which the application is based are:-

- a) That the absence of the counsel for the applicant in court was caused by circumstances beyond her control and are excusable and regrettable.
- b) That the applicant's firm on record did not have any appointed advocates in the office when the matter came up for hearing.
- c) That the entire legal department was paralysed when the former advocate left the country and a replacement had not been found.
- d) That there is now an advocate to take over the conduct of the suit.
- e) That this application has been brought without undue delay.
- f) That the plaintiff stands to suffer irreparable loss and damage if the orders sought are not granted.

The application is supported by the affidavit of the applicant's new advocate, Victoria Wambua sworn on 20.02.07.

Hearing of the application came up before me on 24.05.07 whereat the applicant was represented by learned counsel, Miss V.M. Wambua while the respondent was represented by learned counsel, Mr S.K.M. Wandaka.

Applicant's counsel reiterated the applicant's prayers which are supported by her affidavit sworn on 20.02.07. The purport of the affidavit is that applicant's counsel is an advocate practising with Anne Njogu & Co. Advocates, care of Centre for Rights Education and Awareness (CREAW) who have the conduct of this matter on behalf of the affidavit (sic) – deponent must have meant 'on behalf of the applicant'; that an advocate called Mrs Njuguna previously handled the applicant's case but left the country in circumstances whereby no advocate was available in the firm to continue dealing with the applicant's case; that this unsatisfactory situation continued, leading to dismissal of the applicant's case on 11.12.06 following non-attendance of the applicant herein when her case came up for hearing on 23.11.06. Another advocate, Miss Wambua has taken over the applicant's case and urges the court to give the suit a chance to be heard on merit.

Respondent's counsel opposes the reinstatement of the applicant's suit.

I have given due consideration to the rival affidavit evidence on record and submissions of the parties.

The new counsel for the applicant has vide her affidavit sworn on 20.02.07 deponed that when Mrs Njuguna left the country on 24.11.06, she left the entire legal department paralysed as there was no other counsel in the firm to take over the matter. On the other hand, the respondent has deponed in his affidavit sworn on 10.05.07 that Mrs Njuguna was only an associate counsel; that on record is Ann Wairimu Njogu; and that affidavits filed in support of the present application are silent on why other lawyers in the firm did not attend court. The affidavits filed by the parties hereto present two opposing scenarios: one is that there was no other lawyer in the firm to continue with the applicant's case while the other suggests that there were other lawyers in the firm and questions why those other lawyers did not take over and continue to act for the applicant. I note that the law firm did not close down when Mrs Njuguna is said to have left the country but that the firm became paralysed. In a well run business, nobody should be indispensable. If one person leaves, the firm should arrange for a replacement to keep the business going. This elementary principle does not appear to have been adhered to by the firm of Anne Wairimu Njogu thereby creating the problems the applicant has now found herself in. Those behind that law firm have brought dishonour to the legal profession and should be thoroughly ashamed of themselves. I note, though, that the applicant may not have been involved in the negligent acts and/or omissions of the law firm to which she had entrusted her case. I shall in the wider interests of justice give the applicant a chance to have her case heard and determined on merit. Accordingly, prayer 2 in the chamber summons dated 20.02.07 is granted, the orders issued by this court on 11.12.06 are hereby set aside and the suit herein reinstated. The firm of Ann Wairimu Njogu Advocate shall bear the respondent's costs of the present application in any event.

Orders accordingly.

Delivered at Nairobi this 27th day of September, 2007.

B.P. KUBO

JUDGE