



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Civil Suit 12 of 2006**

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

**LUCY NJERI NJOGU..... APPLICANT/RESPONDENT**

**VERSUS**

**JOSEPH NJOGU NGOYA..... RESPONDENT/APPLICANT**

**RULING**

By chamber summons dated 20.06.06 and filed on 21.06.06 stated to be brought under sections 3A and 63(e) of the Civil Procedure Act, Cap.21 and Order VI rule 13 (a) (sic) of the Civil Procedure Rules, the respondent Joseph Njogu Ngoya applied for the following orders:-

1. That the 'plaintiff's' originating summons dated 13.03.06 be and is hereby struck out with costs. [I pause here to note that the parties to the originating summons are not cited as plaintiff and defendant but as applicant and respondent.]
2. That the costs of this application be provided for.

The grounds upon which the application is based are:

- i. That the plaintiff's suit discloses no reasonable or any cause of action.
- ii. That L.R. No. Dagoretti/Kangemi/253 was transferred to the defendant on 01.08.04 and vehicle Reg. No.KRM 111 on 29.07.93, matters which were known by the plaintiff even before she filed suit and the defendant will refer to the pleadings at the hearing.
- iii. That the plaintiff and defendant were separated in 1985 and have never resumed cohabitation.
- iv. That the court has powers to grant the orders sought.

The application is supported by the respondent's replying affidavit sworn on 22.03.06.

Hearing of the application came up before me on 23.11.06. Learned counsel, Mr S.K.M. Wandaka said he was appearing for 'defendant/applicant'. However, as indicated in the note to prayer 1 above, since the parties to the originating summons have not been designated as plaintiff and defendant but as applicant and respondent, they have been cited in the headnote to this Ruling as applicant/respondent and respondent/applicant, respectively. There was no appearance for applicant/respondent.

Counsel for respondent/applicant informed this court that on 28.09.06 the parties appeared through counsel before Dulu Ag J (as he then was); that applicant/respondent applied for adjournment which respondent/applicant opposed but that the court granted the adjournment; that the applicant/respondent was ordered to pay costs plus court adjournment fees; that the applicant/respondent was granted 7 days to file replying affidavit; and that the said applicant/respondent had not done any of the above things. The court record shows that as at the session of 23.11.06, a check in court (by court clerk) indicated that none of the orders issued on 28.09.06 had been implemented – just as respondent's/applicant's counsel stated to the court on 23.11.06. However, I now note that there is in the court file a carbon copy receipt dated 12.10.06 for Kshs.400/= which would be the court adjournment fee ordered on 28.09.06. Where the receipt has surfaced from is not known to this court. However, the replying affidavit which the applicant/respondent was on 28.09.06 granted 7 days leave to file has not been filed. The court record also shows that on 12.10.06 a representative of M/S Wandaka & Co. Advocates for respondent/applicant appeared at the Registry and took 23.11.06 as the hearing date for the chamber summons dated 20.06.06. An affidavit of service by Paul Ndegwa Wandaka, process server sworn on 23.11.06 deposes that hearing notice for 23.11.06 was served on 03.11.06 upon a clerk in M/s Ann Wairimu Njogu Advocates and that the hearing notice was received under protest. As already recorded, when the chamber summons dated 20.06.06 came up for hearing on 23.11.06, there was appearance for respondent/applicant but not for applicant/respondent. And, of course, there was and still is no replying affidavit filed by the applicant/respondent.

At the session of 23.11.06, respondent's/applicant's counsel informed this court that after the action herein was filed, the respondent/applicant filed affidavit in response on 23.03.06 to the effect that the properties in question are not matrimonial properties; that the parties separated in 1985; that the applicant/respondent was aware the properties in question are not matrimonial properties; that the suit herein is an abuse of the court process; and that the said suit should be dismissed with costs.

I have duly considered the submissions of the respondent/applicant.

The applicant/respondent, Lucy Njeri Njogu filed originating summons dated 13.03.06 on the same date. The respondent/applicant, Joseph Njogu Ngoya filed affidavit response dated 22.03.06 on 23.03.06. Nothing else seems to have happened until 21.06.06 when the respondent/applicant filed chamber summons dated 20.06.06 applying for the originating summons dated 13.03.06 to be struck out. On 28.09.06 the applicant/respondent was granted 7 days leave to file a replying affidavit but she never did. And as already noted, she was not represented when the chamber summons application dated 20.06.06 came up for hearing on 23.11.06. These omissions do not depict the applicant/respondent as someone serious about pursuing the action she filed on 13.03.06. Accordingly, I hereby grant the prayers sought vide chamber summons dated 20.06.06 and strike out the originating summons dated 13.03.06 with costs.

Orders accordingly.

**Delivered at Nairobi this 11<sup>th</sup> day of December, 2006.**

B.P. KUBO

JUDGE