

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

HC. MISC. APPL. NO. 185 OF 2004

**PAMELA AKOTH NYATENG.....APPLICANT
VERSUS
ELIAS OLUOCH AYIEKO.....RESPONDENT**

R U L I N G

Pamela Akoth Nyateng hereinafter referred to as the Applicant has come to this court by way of a Chamber Summons dated 30th November 2004, seeking an order that the petition filed in the Senior Resident Magistrate's Vihiga Divorce Cause Number 7 of 2004 be struck out and the one filed before the Chief Magistrate's Court Nyeri Divorce Cause No. 16 of 2004 to proceed.

It is her contention that she filed Divorce Cause Number 16 on 25th August 2004 in Nyeri CMCC against the Respondent Elias Oluoch Ayieko and that the Respondent also filed Divorce Cause Number 7 of 2004 on 3rd November 2004 in Vihiga Senior Resident Magistrate's Court relating to the same marriage. She maintains that the Respondent works and resides in Nanyuki while she works and resides in Nyeri hence her prayer to have the Vihiga case discontinued.

Having considered the application, I find that the same is unfortunately misconceived as this court has no powers to strike out a suit pending in another court.

The circumstances relied upon by the applicant can only entitle her to proceed under Section 6 of the Civil Procedure Act by seeking to stay the Divorce Cause Number 7 of 2004 filed in Vihiga Senior Resident Magistrate's Court since the matter in issue is directly and substantially in issue in Nyeri CMCC Divorce Cause Number 16 of 2004. Such an application ought to be canvassed in the Vihiga Court, as the High Court powers under section 18 (1) (b) of the Civil Procedure Act only relates to withdrawal of suits from subordinate courts and transfer to another. It does not give the court the power to strike out any suit.

That is to say that this application fails and is therefore dismissed.

Dated, signed and delivered this 18th day of February 2005.

H. M. OKWENGU

JUDGE