



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**

**Civil Suit 134 of 2005 (OS)**

**IN THE MATTER OF: THE MARRIED WOMEN'S PROPERTY ACT 1882**

**AND**

**IN THE MATTER OF: QUESTIONS ARISING BETWEEN TAYIBA  
AHMED TAIB BAJABER & SWALEH SALIM  
MOHAMED BAJABER CONCERNING THE TITLE  
TO MATRIMONIAL PROPERTIES AND FUNDS**

**TAYIBA AHMED TAIB BAJABER .....PLAINTIFF/APPL.**

**VERSUS**

**SWALEH SALIM MOHAMED BAJABER .....DEFENDANT/RESP.**

**R U L I N G:**

This suit was originated by the process of originating summons. This is provided for under the provisions of Married Women Property Act 1882 a statute of General Application in Kenya. The purpose is to facilitate as a matter of urgency the interests in matrimonial property of married women.

This part of law is applicable both customary marriages, Statutory marriages including Muslim Marriages see the case of (1) I vs I

**(2) KARA VS KARANJA**

and other more recent authorities.

Mr. Hassan has referred to authority of Wakf Commissioners of Mohamed Bin Umenya Bin Abdulmajji Mwijabu KLR [1984] 346.

That authority relates to trusts (Wakf) properties between Trustees and beneficiaries not "married women properties Act."

In that case the court of appeal held: Originating summons procedure is intended for settling simple matters without the expense of a full trial and not for serious complex issues.

I find this authority not to be relevant at all. The originating summons referred to in the 1882 Act is the special procedure available in England then I have not been referred to any authority which prohibits the court from investigating the rights of husband and wife in matrimonial properties. Whether the marriage is subsisting or not. In this case the parties are residing apart and it is necessary for the Plaintiff' (wife) to protect her interests.

I find no merit in this application and the same is dismissed with costs to the Respondent.

**Delivered and dated at Mombasa this 6th day of September 2005.**

**J. KHAMINWA**

**J U D G E**

**6/9/05**

Khaminwa, J

Mr. Mwakisha – present

Mr. Akanga h/b for Hassan

Ruling read in their presence.

Mr. Mwakisha:

There are interim orders in the original certificate of urgency. That application to be fixed for hearing. Interim orders substituting are hereby extended pending hearing inter partes on priority basis.

Mr. Akanga

No objection.

KHAMINWA, J

Orders accordingly.

KHAMINWA, J