



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT BUNGOMA  
DIVORCE CASE NO. 1 OF 2003**

**SOSPETER OJAAMONG ..... PETITIONER**

**AND**

**LINET AMONDI AJAAMONG**

**Nee LINET AMONDI OTIENO ..... RESPONDENT**

**RULING**

The Applicant/Respondent sought to have this Divorce Cause stayed pending the outcome of a separation and Maintenance Cause No. 42 of 2003 filed at Milimani Commercial Court and the Children's Cause No.363 of 2003 filed at the Resident Magistrate's court Nairobi.

It would appear the summons was served upon the petitioner's advocate but he failed to file a reply. When this matter came up for inter partes hearing Mr. Ocharo who held brief for Mr. Akhaabi for the petitioner applied for an adjournment on the ground that Mr. Akhaabi missed a flight to Kisumu. The application for adjournment was refused on the ground that the petitioner had not filed a reply, hence it would not have made any difference even if Mr. Akhaabi was present, he would still not have been heard. Miss Okal for the applicant/Respondent was then granted leave to proceed ex parte.

She urged me to stay this Divorce cause because the two matters I referred earlier were filed prior to this. It is also stated that the parties in both suits are the same and issues raised are similar.

I am bound to satisfy myself first that the matter before me is competent. I have read the provisions of Sections 3 A and 6 of the Civil Procedure Act in conjunction with Order L rule 1 of the Civil Procedure rules. What comes out clear is that a party who comes to court under the above provisions must file a Notice of Motion. The matter before me is a chamber summons which in my view is incompetent.

Even if I were to be found to be wrong, I think the summons does not comply with the provisions of Order L. rule 7 of the Civil Procedure rules which provides:

*“Every summons shall state in general terms the grounds of the application being made and shall be heard in chambers and, where the summons is based on evidence by affidavit, a copy of the affidavit shall be served.”*

The summons before this court does not contain the grounds.

I am of the view that the failure to specify the grounds in the body of the summons makes the application fatally defective and incompetent.

The second matter which I wish to state is that the matrimonial causes Act, Cap 152 Laws of Kenya and the rules embodied therein is a self regulating piece of legislation. There is no room to import the provisions of the Civil Procedure Act unless specifically stated in the aforesaid Act or the rules embodied therein. I am of the opinion that the applicant could have been competently before me under rules 3(3) and rule 27 of the matrimonial causes rules.

Having come to the conclusion that there is no competent application before me, I am not bound to consider the merits of the grounds advanced by the applicant/respondent's counsel in support of the

summons.

Consequently the summons dated 12th November 2003 is ordered struck out with no order as to costs.

**DATED AND DELIVERED ON THIS 26th DAY OF March 2004**

**J.K. SERGON**

**JUDGE**