

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

DIVORCE CAUSE NO.17 OF 1999

**A A.....PETITIONER
VERSUS
B S N G.....RESPONDENT**

J U D G M E N T

The Applicant (Petitioner) and the Respondent were married on 18th October 1993. They had two children of the said marriage namely R A who is now aged 8 years and T A who is now 7 years old. On 31st May 1999, the Petitioner filed Petition seeking desolution of the said marriage and custody of the issues of marriage. The Respondent filed an answer to that Petition and Cross Petition. For some reasons not made clear in the records before me, only the Petition for Divorce was heard on 25th September 2000 and was granted on the same day. The question of the custody of the children was not gone into and this application is the purported application dated 14th September 2001 seeking that the Petitioner herein be granted the custody, maintenance and education of the children of the said marriage namely R A and T A. It is also seeking that costs of this application be in the cause.

This application is bad in law as it is by way of Chamber Summons but the same Chamber Summons is not stamped by court stamp at least the copy in the file which as I can see is the original.

I note however, that the Respondent did not raise this defect and has acted on the application. I note also that the questions raised in the application were raised, as I have stated above in the Petition and in the cross-petition. Under such circumstances, I will not dismiss the application.

I will strike it out so that if the Applicant still wishes he can file another application as this is a matter concerning the welfare and interest of children.

Application dated 14th September 2001 is struck out. No order as to costs.

Dated and Delivered at Mombasa this 12th Day of November 2002.

J.W. ONYANGO OTIENO

JUDGE

