



REPUBLIC OF KENYA



KENYA LAW
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**Wagura v Kaguongo (Matrimonial Case E009 of 2024)
[2025] KEHC 10143 (KLR) (10 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10143 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
MATRIMONIAL CASE E009 OF 2024
FN MUCHEMI, J
JULY 10, 2025**

BETWEEN

TERESIA WANJIRU WAGURA APPLICANT

AND

NAFTALI WAGURA KAGUONGO RESPONDENT

RULING

1. The application dated 28th February 2025 seeks for orders of interim maintenance and upkeep of the applicant and her school going children from the respondent's pension/retirement benefits. Further the respondent be directed to continue paying for or contribute to the applicant's rent, utilities and other necessary expenses pending the hearing and determination of the main suit.
2. In opposition to the application, the respondent filed a Replying Affidavit dated 6th March 2025.

The Applicant's case.

3. The applicant states that she was married to the respondent but their marriage was dissolved and a decree absolute issued in the year 2023. The applicant states that throughout their marriage, the respondent provided for her upkeep, rent and other necessities and continued to do so after their separation until he abruptly withdrew support.
4. The applicant avers that the respondent is a retired civil servant receiving a pension and is financially stable whereas she is currently unemployed and struggling to meet her daily needs and those of her children. The applicant states that she has no source of income and she is unable to cater for rent, utilities, food and medical expenses without the respondent's support. Further the school going children of the marriage are under her care and require maintenance, education and support.
5. The applicant states that the abrupt withdrawal of financial support by the respondent has placed her and her children in extreme hardship and she fears eviction and lack of basic necessities.



The Respondent's Case.

6. The respondent states that he took care of all their children's needs and they are currently adults aged 30, 28 and 22 years who fend for themselves. The respondent further states that none of the children are attending school and even if that were the case, the current court is not the proper forum to seek support.
7. The respondent states that when he commenced divorce proceedings in Thika CMCC No. 21 of 2021, the applicant had deserted their home and was cohabiting with one Nene Mathenge at Landless Estate Thika.
8. The respondent states that the applicant is a trained ECD teacher and is engaged in the matatu industry. Further, the respondent avers that they have not associated since the year 2020 and each of them has lived their own life thus the issue of withdrawal of support does not rise.
9. Directions were parties put in written submissions and the record shows that the respondent complied by filing submissions. The applicant on the other hand had not filed her submissions by the time of writing this ruling.

The Respondent's Submissions.

10. The respondent relies on Order 9 Rule 7 of the [Civil Procedure Rules](#) and the case of [Joshua Nyamaache T. Omasire v Charles Kinanga Maena](#) (no citation given) and submits that the originating summons dated 18th November 2023 was instituted by the applicant in person but the instant motion has been filed by the firm of Khaminwa Advocates but the said advocates have not filed a Notice of Appointment. Furthermore, the said advocates have not signed the pleadings. Thus the respondent argues that the application is a nullity and ought to be struck out. To support his contentions, the respondent relies on the cases of [Cheraik Management Ltd v National Social Security Fund, Board of Trustees & Another](#) (2012) eKLR and HCCA No. 12 of 2018 – Chuka George Karimi Ringera v Board of Trustees Diocese of Meru Iruma Parish & Others.
11. The respondent submits that the affidavit in support of the application was not dated contrary to Section 5 of the [Oaths and Statutory Declarations Act](#). Relying on the case of [Maureen Nyambura Ngigi Warui v Board of Directors, Kenya Power & Lighting Company Ltd & 2 Others](#) (2020) eKLR, the respondent submits that the affidavit ought to be struck out.
12. The respondent argues that the applicant has brought the instant application under the wrong provisions of the law as the said application has been brought under Section 25 of the [Matrimonial Causes Act](#) yet the instant suit is one for division of matrimonial property.
13. The respondent submits that their children are aged 30, 28 and 22 years old and none of them are in school, a fact that has not been rebutted by the applicant. Further, the applicant is an ECD Teacher and engaged in the matatu industry hence she has her own source of income. Additionally, the respondent submits that the two have not had any association since the year 2020 hence the issue of withdrawal of maintenance does not arise and in any event the applicant was cohabiting with one Nene Mathenge in Landless Estate in Thika. To support his contentions, the respondent relies on the case of C.A No. 21B of 2022 – Kisii [CKN v DMO](#) and submits that alimony is no longer a reality in Kenya with the introduction of the equality clause provided under Article 45 of the [Constitution](#).



Whether The Application Is Properly Before The Court.

14. The respondent in his submissions argued that the application is purportedly filed by Khaminwa & Khnaminwa advocate who have neither signed the application nor filed a Notice of appointment of advocate as required by the law.

15. Order 9 Rule of the *Civil Procedure Rules* provides: -

“Where a party , after having sued or defended in person, appoints an advocate to act in the cause or matter on his behalf, he shall give notice of the appointment, and the provisional of this order recating to a Notice of Appointment of an advocate with the necessary notification.”

It was held in the case of *Joshua Nyamche T. Omasire v Charles Kinanga Maena* that: -

“...An advocate who is not duly appointed to act for a party cannot be allowed to purport to file applications or documents on behalf of a party. An application filed by an advocate who is not duly appointed is an affront to the court process and is a nullity. The court can strike it out ex debito justitiae”

16. I have perused the applicant’s pleadings and noted that the Originating Summons were filed by the plaintiff in person. This application brought under certificate of urgency was filed by one George Kariuki Advocate of Khaminwa & Khaminwa advocates. It is the Notice of appointment which is a requirement of the law under Order 9 Rule 7 of the *Civil Procedure Rules* was not filed by the said firm of advocates when they took over the matter as the applicant’s advocates.

17. It is further noted that the certificate of urgency bears a stamp of Khaminwa & Khaminwa advocates but it is not signed by the advocate concerned in the law firm. The same case applies to the Notice of Motion. It is trite that all pleadings must b signed by the time they are filed in court and failure to sign renders such documents null and void. The advocates failed to file the Notice of appointment upon being appointed to act for the applicant. This coupled with the omission to sign the pleadings renders this application defective.

18. The application was filed under Section 25 of the *Matrimonial Causes Act* while this suit is brought under the Matrimonial Causes Act. This is another glaring defect and misapplication of the law.

19. I find the application dated 28/02/2025 incompetent nd misconceived. It is hereby struck out with cost to the respondent.

20. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 10TH DAY OF JULY 2025.

F. MUCHEMI

JUDGE

