



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KISUMU**

**MISC. CIVIL APPLICATION NO 258 OF 2017**

**ABDALLAH NONO OBONY.....APPLICANT**

**VERSUS**

**MONICA KIHA alias YASMIN.....RESPONDENT**

**RULING**

1. By a notice of motion dated 10th November, 2017 brought under Section 15 and 18 of the Civil Procedure Act and Order 50 rule 1 of the Civil Procedure Rules 2010, the applicant prays for orders:-

**1) THAT this application be certified urgent**

**2) THAT the Honourable Court be pleased to stay further proceedings in KISUMU KADHI DIVORCE CAUSE NO. 9B OF 2017 MONICA KIHA alias YASMIN VsABDALLAH NONO OBONY**

**3) THAT the Honourable Court be pleased to transfer KISUMU KADHI DIVORCE CAUSE NO. 9B OF 2017 MONICA KIHA alias YASMIN VsABDALLAH NONO OBONY for hearing and disposal before any other Kadhi's Court within the geographical environs of Kisumu County**

**4) THAT the costs be provided for**

2. The application is based on the grounds among others that the Kadhi has refused to recuse himself and has continued to hear a land dispute that is outside his jurisdiction.

The application is supported by an affidavit sworn by the applicant on 10th November, 2017 in which he reiterates the grounds on the face of the application in addition to other allegations against the petitioner and the Kadhi.

3. The application is opposed on the grounds set out in a replying affidavit sworn by the respondent on 22nd November, 2017 in which she denies the allegations made against her and prays for the dismissal of the application which according to her is meant to delay the conclusion of the case thus denying her justice.

4. I have considered the notice of motion in the light of the affidavits by the parties. According to the applicant, there is a complete disagreement between him and the Kadhi over the manner in which the Divorce Cause is being conducted and his attempts to put forward his case have been thwarted by the Kadhi. He averred that the Kadhi was giving more attention to petitioner with the intention of delivering a wrong judgement.

5. Where a party has an issue with a Judge or any judicial officer for that matter, the well settled practice was set out by the East African Court of Justice in Attorney General vs. Anyang' Nyong'o and Others [2007] 1 EA 12 as follows:

***“The usual procedure in applications for recusal is that counsel for the applicant seeks a meeting in chambers with the Judge or the Judges in the presence of the opponent. The grounds for the recusal are put to the Judge or Judges who would then be given an opportunity, if sought, to respond to them. In the event of the recusal being refused by the Judge, the applicant would, if so advised, move the application in open court.”***

6. The applicant did not annex court proceedings in KISUMU KADHI DIVORCE CAUSE NO. 9B OF 2017 MONICA KIHA alias YASMIN vs ABDALLAH NONO OBONY and he has therefore failed to satisfy the court that the proceedings have been conducted in the manner contained in his affidavit. There is also no evidence that an application seeking to have the Kadhi recuse himself has been placed

before him for consideration and he declined to do so. In any case, if the Kadhi had declined to recuse himself, the party aggrieved by the decision arising therefrom would be at liberty to appeal but not to seek transfer of the case.

7. Similarly, the allegation that the Kadhi has exceeded his jurisdiction by dealing with a land matter, would not entitle the applicant to an order of transfer. If at the conclusion of the case the applicant is of the opinion that the Kadhi will have exceeded his jurisdiction, **the remedy for errors of this kind is to appeal to a higher court.**

8. For the foregoing reasons, I decline the invitation to interfere with the proceedings in **KISUMU KADHI DIVORCE CAUSE NO. 9B OF 2017 MONICA KIIA alias YASMIN vs ABDALLAH NONO OBONY.**

9. In the result the order which commends itself which I hereby grant is that the notice of motion dated 10th November, 2017 is misconceived and is hereby dismissed with costs to the respondent.

***DATED AND DELIVERED THIS 1st DAY OF February 2018***

**T.W. CHERERE**

**JUDGE**

**Read in open court in the presence of-**

Court Assistant - Felix& Carol

Applicant - N/A

Respondent - Ms Akoth