



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**FAMILY DIVISION**  
**DIVORCE CAUSE NO. 6 OF 1997**  
**(CONSOLIDATED WITH HCCC NO. 160. 1997 (OS))**

**M S K.....PETITIONER**

**VERSUS**

**S N K..... RESPONDENT**

**S M I.....CO-RESPONDENT**

**RULING**

1. This is a ruling on directions. Counsel for the objector has sought directions as to the determination of the application dated 26<sup>th</sup> July 2011. The petitioner has countered that the same on grounds that it has been overtaken by events.
2. The said application was filed herein on 26<sup>th</sup> July 2011. It seeks two principal orders – a stay of proceedings with regard to Notice to Show Cause dated 3<sup>rd</sup> February 2011 and exclusion of LR No. [Particulars withheld] Nairobi South C from attachment and sale pending discharge by the objector.
3. The matter initially came before W Karanja J. on 26<sup>th</sup> July 2011, when the Notice to Show Cause was stayed and it was directed that the application be served with respect to the prayer on LR No. [Particulars withheld] Nairobi South C. I was subsequently directed by Mugo J. that the said application be disposed of by way of written submissions to be highlighted.
4. The parties did comply and filed written submissions, which were highlighted on 19<sup>th</sup> July 2012 before Mugo J. The court fixed 1<sup>st</sup> November 2012 as the date it was to deliver its ruling on the application. It transpired that Mugo J. left the Family Division before the ruling could be delivered. It is in those circumstances that I am now being invited to give directions on the matter.
5. The petitioner's position is that the application dated 26<sup>th</sup> July 2011 need not be determined for it has been overtaken by the decision of the Court of Appeal in Civil Appeal No. 139 of 2010 made on 24<sup>th</sup> May 2015.
6. I have had occasion to peruse the said judgement of the Court of Appeal to the extent that it has affected LR [Particulars withheld] Nairobi South C. It was a finding of the Court of Appeal that the petitioner was entitled to only 25% of LR No. [Particulars withheld] Nairobi South C instead of the 50%

that she had been awarded by the High Court.

7. The application dated 26<sup>th</sup> July 2011 was prompted by the Notice to Show Cause issued by this court dated 3<sup>rd</sup> February 2011. The said Notice was predicated on an application for execution of decree lodged at the registry on 28<sup>th</sup> January 2011 by the petitioner. It sought orders for issuance of prohibitory orders and registration thereof against certain titles, which included, LR No. [Particulars withheld] Nairobi South C, and for orders for attachment and sale of the said assets.

8. The petitioner's interest in LR No. [Particulars withheld] Nairobi South C as stated in the application for execution was 50% share thereof. That was in consonance with the judgement of Ang'awa J. delivered on 10<sup>th</sup> May 2005. It was the 50% share that was reduced by the Court of Appeal in its judgement of 14<sup>th</sup> May 2015 to 25%.

9. It is patently clear that the judgement of the Court of Appeal has not occasioned an event that can be said to have overtaken the application dated 26<sup>th</sup> July 2011. All it has done is to reduce the petitioner's share of the property the subject of the application to 25%. The petitioner is still entitled to proceed with the application for execution of the decree of this court to secure her entitlement to the 25% share aforesaid.

10. Consequently, the application dated 26<sup>th</sup> July 2011 is available for determination. The submissions on record have been highlighted, and what remains is a determination by the court. I shall proceed to give the date when I shall deliver my ruling thereon based on the written submissions filed and the arguments recorded by Mugo J. when the submissions were highlighted.

**DATED, SIGNED and DELIVERED at NAIROBI this 15<sup>TH</sup> DAY OF SEPTEMBER, 2016.**

**W. MUSYOKA**

**JUDGE**