



**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**CAUSE NO. 57 OF 2011**

**N U F R.....PETITIONER**

**VERSUS**

**M S C.....RESPONDENT**

**RULING**

1. The respondent has through his lawyer raised a preliminary objection challenging the competence of this suit on several grounds. In their Notice of Preliminary Objection filed on 8<sup>th</sup> November, 2011, counsel for the respondent claim that this suit is not only bad in law for misjoinder of causes of action but as pleaded it is also embarrassing and prejudicial to the respondent.
2. Mr. Mwangi for the respondent submitted that the petitioner claims for a palatial home, a slick car, and authority to control the respondent's companies. From that pleading, it appears that the substratum of this suit is an application under **Section 17** of the **English Matrimonial Property Act** of 1882.
3. However, besides that claim the suit also raises fundamental constitutional issues which should have been brought by way of a constitutional reference or petition and filed in the Constitutional and Human Rights Division.
4. The petition has also raised issues of divorce and separation which should have been brought by a judicial separation or divorce petition. He said on page 158 of the supplementary affidavit, there is report from Weekly Citizen of SMSs which contain obscene matters. He said those are issues that should have been brought by way of a separation or divorce petition so that they are heard in camera.
5. He argued that combining all these issues is not only a misjoinder of causes of action but is confusing to the respondent. He said the respondent does not therefore know how to defend himself in all those matters.
6. On her part, the petitioner sees this as a waste of valuable judicial time. She said the respondent has disputed all her claims and put her to strict proof of each allegation she has made. That means the facts of this case are strongly disputed.
7. Citing the case of **Mukisa Biscuit Manufacturing Co. Ltd. vs West End Distributors Ltd** she

argued that a preliminary objection cannot be raised where the facts are disputed as in this case.

8. If there is any defect in her pleadings she cited the case of **D.T. Dobie (K) & Co. Ltd vs Muchina & Another** and argued that they can be rectified by amendment.
9. On misjoinder the petitioner argued that she raised constitutional issues in this suit because the respondent assaulted her in a matrimonial setting and labelled as immoral. There is no greater insult against a woman that calling her immoral. She said this is not a separation or divorce petition. This is an application for division of matrimonial property and the issues of dowry and maintenance are properly combined in this suit to avoid a multiplicity of suits. In the circumstances she urged me to overrule the preliminary objection.
10. I have considered the matter. Mr.Mwangi for the respondent is not suggestion that the plaintiff has no right to raise any or all the issues she has raised in this suit. What I understand his complaint to be is misjoinder of causes of action.
11. Mr. Mwangi's contention that this court has no jurisdiction to determine constitutional issues has no basis. Any division of High Court has jurisdiction to determine constitutional issues. Not every constitutional issue should be filed in the Constitutional and Human Right Division. Those arising in family causes can be raised and determine in the Family Division and the same should apply to other divisions. There is therefore nothing wrong in the applicant having raised constitutional issue in this case.
12. As I have said, Mr.Mwangi's other complaint is that there is a misjoinder of cause of action in this case. Misjoinder of causes of action is the union, which the law does not permit, of different causes of action in a single suit. Mr Mwangi did not cite any provision of our civil procedure which outlaws the union of different causes of action against one defendant. To the contrary Order 3 rule 5(1), read with the rest of that order, actually permits that. In any case as the applicant contended, that will obviate a multiplicity of suits.
13. Though the applicant's pleadings are unnecessarily verbose and do not have the legal finesse, considering the fact that the applicant is not a lawyer, I find no technical fault in them that would warrant their striking out.
14. Consequently I overrule the respondent's preliminary objection with cost.

**Dated and delivered this 15<sup>th</sup> day of December 2011.**

**DK.MARAGA**

**JUDGE**



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