

**The Recently Established Family Division of the High Court of Kenya**  
by: **Hon. Justice Joyce Aluoch, High Court, Kenya**

*A paper presented on 11<sup>th</sup> May 2004 at the Seventh Biennial Conference of the International Women Judges in Entebbe, Uganda, on a panel entitled “Family Law Courts – Are They Beneficial?”*

The idea of dividing the high court into various divisions was part of Judicial Reforms brought about by the Kwach Commission report to improve the efficiency of the court system in Kenya and make it more responsive to the needs of the people.

Both the civil and criminal section, now termed Divisions, was already operational. The Commercial Division was set up almost immediately with the support of the cooperates, but no attention was paid to Family matters which were left scattered all over the courts making it difficult to collect data and set a standard practice and procedure comparable to those of other jurisdictions.

As women Judges, we felt deeply concerned about this state of affairs, and as the Chairpersons of the Kenya women Judges Association I decided to take the “bull by the horn” so to speak.

With funding from the judiciary under the “GOK–UNDP Programme,” I organized a “brainstorming” workshop and invited relevant stakeholders, which included the office of the Attorney General, FIDA, The Law society of Kenya, Women Parliamentarians, and several leaders of Women’s organizations.

The workshop came up with various recommendations which included issues to be litigated in the Division such as, Marriage and Divorce, Separation and Maintenance, Disputes of persons in peculiar relationships, burial disputes, Succession, custody, adoption and maintenance of children, Legitimacy, Nationality, Citizenship and Domicile, and any other jurisdiction conferred by any Act of Parliament.

Further recommendations were to the effect that Juvenile Justice should remain a separate arm of the Family Division so as to allow for the development of a comprehensive Juvenile Justice System, and again, that the Division which carries the Family courts should be multidisciplinary in its composition, and embrace the services of professionals such as psychiatrists, psychologist, counselors, social worker, enforcement officers, mediators, investigators, police officers etc. The Registrars, Magistrates or Judges should refer those cases to these professionals at any stage of the proceedings.

The recommendations were forwarded to the Chief Justice, who accepted them and in turn appointed a broad based committee to prepare for the launch of the Family Division of the high Court.

Here again the Kenya Women Judges' Association took the lead as I was appointed to the Chair of the committee and when the Division was finally launched in December 2001, I was appointed the first Head of the Division.

What challenges have confronted the court in reaching its present stage of development?

- The greatest challenge is the lack of decentralization of the court, which is based only in Nairobi where it was launched about 4 years ago. This poses a big problem as many litigants travel to Nairobi to file their cases. This puts too much pressure on the 3 Judges assigned to the division in Nairobi. Our projection was to have a division of the Family Court in every province to begin with, and at a later stage, every district, but this has not been achieved, partly, due to the elaborate and extensive reforms which have been going on in our Judiciary
- The second greatest challenge is the slow pace of training of judicial officers, on Family Law matters.
- The third greatest challenge is the lack of computerization, which makes it impossible for Judges to have access to decision of their colleagues in an effort to achieve uniformity. Lack of computerization is also making it easy for unscrupulous litigants especially in Succession 'causes to file several cases in different courts in the country and obtain Grants which they use to deprive dependants of deceased persons of their properties without being detected.
- The fact that the division has not become fully multidisciplinary in its composition as was envisaged is another big challenge. There is only one Children's officer attached to the Division on full time basis, but that is about all at the moment.

Finally is to probe the question whether the court is fulfilling the expectations for eh Kenyan people. My honest response is, "Yes," despite the challenges I have enumerated above.

- In the first place, there is increased litigation in Family Law matters because of the established procedures.
- Secondly the 3 Judges are more focused in their work as they only handle Family Law cases,
- Thirdly, most Kenyans have faith in the Family Division because it is producing positive results.
- Fourthly, the statistics I have brought with me show the large number of cases which have been finalized, and finally,
- There is reduced cost of litigation and more access to justice by all, especially the most vulnerable i.e. women and children.

I will conclude by explaining the because of the high number of deaths occurring as a result of HIV/Aids, in our country and everywhere else in the world, I took the liberty right from the onset, to simplify litigation in Succession Cases by lifting the statutory forms from the Succession Act, and making them readily available in the Family Division Registry at a very reduced fee of Kshs.5 or 7 cents which is less than a dime, in terms of

the American currency, this process has made litigation in Succession cheap, quickly as simple as any litigant can today buy the statutory forms, complete them and file them straight away without using the services of lawyer who charge exorbitant fees!

The Kenya Women Judges' Association will strive to see that litigation in all aspects of Family Law matters is simplified!

Thank you for your attention.