



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

MATRIMONIAL CAUSE NO. 23'A' OF 2018 (O.S)

IN THE MATTER OF SECTIONS 7, 12 AND 17 OF THE MATRIMONIAL PROPERTY ACT NO. 49 OF 2013

AND

IN THE MATTER OF AN APPLICATION FOR DIVISION OF MATRIMONIAL PROPERTY

BETWEEN

KNMAPPLICANT

VERSUS

MHM..... RESPONDENT

RULING

1. The plea by the applicant KNM seeking the respondent MHM to be compelled to pay for her accommodation expenses during her stay in Kenya for the hearing of the matrimonial cause; that she be allowed adequate time to apply to the Swiss Authorities for permission to travel outside Switzerland for the purpose of attending the hearing of the cause in Kenya; for the Deputy Registrar to write to the Swiss Authorities a letter explaining the need for her to attend court in order to facilitate the issuance of travel documents to her; to direct the respondent to desist from attempting to dispose of their matrimonial home in Geneva, including payment of mortgage pending the hearing and determination of this cause; and for the respondent to secure her personal security while in Kenya due to the threats from him were all contained in her replying affidavit sworn on 27th August 2019 in response to the respondent's notice of motion for review dated 15th July 2019. The application sought the review of the consent of 8th May 2019 that had asked that the matrimonial cause be disposed of by affidavit evidence and written submissions.

2. The respondent's motion dated 15th July 2019 was allowed. It was ordered that the application be heard by oral evidence and cross-examination on a date convenient to the parties; the respondent pays for an economy return ticket to the applicant when she comes for the hearing of the cause; and that, in the meantime, the respondent does not evict the applicant from the house in Geneva when she is travelling to Kenya for the hearing of the case.

3. The present motion dated 27th May 2020 seeks the following orders: -

“1. This Honourable Court be pleased to review and/or vary its ruling and orders given on 8th April 2020.

2. This Honourable Court be pleased to address and grant the orders sought by the applicant in the Replying Affidavit dated 27th August 2019 namely: -

(a) compel the Respondent to pay for the Applicant's accommodation expenses during the entire period of her stay in Kenya;

(b) The Deputy Registrar to write to the Swiss Authorities a letter explaining the need for the Applicant to attend court in order to facilitate the issuance of travel documents to the Applicant;

(c) Direct that the Respondent to desist from attempting to dispose the Matrimonial Home in Geneva including payment of the mortgage pending the hearing and determination of this cause;

(d) Secure the Applicant's personal security while in Kenya due to the threats from Respondent.

3. This Honourable Court be pleased to grant leave to the applicant to call witnesses and register witnesses statements in Court before the hearing of the originating summons dated 3rd April 2018.

4. The cost of this application be provided for."

4. The complaint by the applicant is that the court did not grant the prayers in the replying affidavit sworn on 27th August 2019 in answer to the application dated 8th May 2019. She asks that the court does review the ruling dated 8th April 2020 because it did not grant the prayers in the replying affidavit. The answer to the complaint is that the application that resulted in the ruling was by the respondent. The replying affidavit was in answer to the respondent's application. The replying affidavit did not constitute an application, and could not have formed the basis of the orders that had been prayed for by the respondent. The applicant had no application, and therefore the present application for review is completely misplaced.

5. As for the issue of being allowed to call witnesses and to file witness statements, once the court ordered that the matter be heard orally it meant that either side was at liberty to call witnesses. Infact, I ask either side to file affidavit evidence of any witnesses he/she seeks to call. The evidence be filed and served within 30 days from today.

6. Otherwise, the application dated 27th May 2020 is dismissed. I make no orders as to costs as this is a family dispute.

DATED and DELIVERED electronically at NAIROBI this 22ND day of APRIL 2021.

A.O. MUCHELULE

JUDGE