



**REPUBLIC OF KENYA**

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

**DIVORCE CAUSE NO. 140 OF 2008**

**E Z B.....PETITIONER/APPLICANT**

**-VERSUS-**

**P M N.....RESPONDENT**

**RULING**

1. This is the second time the Applicant's Application comes before the Court. The Court previously ruled that there was insufficient evidence before it to grant the Orders sought. In brief the Applicant is seeking an order granting her leave to withdraw the monies held on trust for the benefit of the two children of the marriage pursuant to the Judgment of Hon Justice Nyambuye J of 21<sup>st</sup> May 2010.

2. In its previous Ruling this Court said:

*1. "Given the parlous state of this Application the Court would be justified in dismissing it. However, given that this is a family matter this Court resolves to allow the Applicant a further opportunity to place before the Court the evidence that will enable it to reach a decision in particular:*

*(1) The needs of each child separately.*

*(2) The name & address of the education institution each child attends or intends to attend.*

*(3) The fee that is due immediately.*

*(4) The fee that will become due and the dates on which that will be payable.*

*(5) The amount of funds held in the Bank account.*

*2. I therefore order that the Applicant be and is hereby granted leave to file and serve further evidence as necessary to support the Application within 14 days.*

3. The Applicant has since, on 27<sup>th</sup> April 2017 filed a Further Affidavit. In it she clarifies a number of points and provides supporting evidence for others.

4. Firstly, the Bank Account has been identified. It is Account No 20\*\*\*\*\*345 held at Barclays Bank Enterprise Road Branch. It has also transpired that rather than holding the sum of Kshs.1,000,000 as expected under the Order of May 2010, in fact there was only about KShs.400,000 deposited and now that has grown to KShs414,439.85. In view of the amount there is a limit to how far it will stretch.

5. The needs of both Children is set out the older child B M is embarking on the remainder of a BA in Leadership and Management by Distance learning from the University of [particulars withheld] and **Exhibit EB-4** confirms he is so enrolled. There are also the needs of the younger child to have her High School fees paid to enable her to complete her studies.

6. At paragraph 17 the Applicant states *“THAT the money held in the trust account is enough to pay University Fees for my son for the two years and hence enable me [to] work towards raising my daughter’s fees”*. And paragraph 18 she says *“THAT my son has now attained the age of majority and has consented to the release of the funds held in the trust account”*. His Affidavit signifying his consent is duly exhibited as **EB-9**. The Applicant undertakes that she will use all of the funds for the education of the Children only.

7. In view of the history of this case and in particular that it has been the Mother who has been solely responsible for raising the Children since 2010, the Court is satisfied that she will comply with the undertaking she gives.

8. In light of the foregoing it is ordered and directed that all the funds held in Barclays Bank Account No 20\*\*\*\*\*345 held at Barclays Bank Enterprise Road Branch be paid to the Applicant E Z B within 30 days of service of this Order upon the Bank. Such funds to be used for the education and betterment of the Children of the Family.

**Order accordingly,**

**FARAH S. M. AMIN**

**JUDGE**

**Delivered dated and signed on the 25<sup>th</sup> day of January 2018**

In the Presence of:

Court Assistant: Mr Patrick Mwangi

For the Applicant: Mr Anyona Holding Brief for Mrs Muriuki

For the Respondent No Appearance