



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI LAW COURTS
FAMILY DIVISION
DIVORCE CAUSE NO. 79 OF 2006

V.V.A.....PETITIONER

VERSUS

H.S.P.....RESPONDENT

JUDGMENT

1. The petitioner V.V.A. and the respondent H.S.P. got married on 23rd July 1988. They cohabited in India, U.K. and then in Nairobi and Kisumu in Kenya. The marriage was dissolved on 24th July 2008.
2. Following an application dated 25th July 2008, the court on 11th February 2010 ordered that the applicant shall pay to the respondent Kshs.120,000/= per month for maintenance and a further Kshs.60,000/= for rent, if and when the respondent entered into a tenancy agreement following her acquisition of independent premises. She was at the time staying with her mother. In a ruling delivered on 9th July 2010, the Court of Appeal reviewed the orders of this court and reduced the maintenance amount to Ksh.60,000/= per month. The rent payment was not allowed by the Court.
3. In an application dated 19th May 2017 the applicant sought that the order of maintenance be reviewed, set aside and/or discharged on the grounds that:-
 - (a) the respondent was a businessman in gainful employment and with considerable wealth and assets, with several sources of income and was therefore more than capable of sustaining herself;
 - (b) she continued to stay with her mother and did not require to pay any rent;
 - (c) the only issue of their former marriage was now gainfully employed as managing director of [Particulars Withheld] International Limited; and
 - (d) the respondent, her father and family had unlawfully removed the applicant as director.
4. In opposing the application, the respondent stated that the applicant was able to meet the maintenance obligation as he had large business concerns both in India and in Kenya. Regarding the competence of the application, the respondent explained that the order of the Court of Appeal followed a Notice of Appeal

that the applicant filed to challenge the orders of this court. With the Notice of Appeal was filed an application for stay of execution. It was in the application that the Court of Appeal made the orders in question. The respondent stated that following the orders, the applicant did not file the Record of Appeal. When she applied to have the appeal struck out, he filed a notice to withdraw the appeal. It was her case that, the appeal having been withdrawn the orders lapsed which took the matter back to what this court had ordered on 11th February 2010. I accept that position. The basis for the order sought to be reviewed was the appeal. Now that the appeal was withdrawn, the orders could not subsist on their own.

5. The consequence is that, the orders of the Court of Appeal issued on 9th July 2010 are no longer in place. Therefore, the application to review, set aside or discharge these orders is misconceived, misplaced and incompetent. It is struck out with costs.

DATED and SIGNED at NAIROBI this 6TH day of MARCH 2018.

A.O. MUCHELULE

JUDGE

DATED and DELIVERED at NAIROBI this 8TH day of MARCH 2018.

R.E. OUGO

JUDGE