



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

DIVORCE CAUSE NO. 27 OF 2013

M D B M PETITIONER

VERSUS

R S S RESPONDENT

F M CO-RESPONDENT

RULING

1. I delivered a ruling herein on 28th November 2014 wherein I made orders relating to payment of maintenance of the petitioner and the child of the marriage by the respondent, repair by the respondent of the petitioner's vehicle and settlement of school fees and school-related expenses of the child of the marriage by the respondent.

2. The respondent thereafter approached this court by a Motion dated 22nd January 2015, seeking review of the said orders. The application is founded on three principal grounds –

(a) That the respondent has discovered of new and important matter and evidence ;

(b) That the orders were obtained on the basis of fraudulent documents; and

(c) That the material circumstances of the parties have changed as the child the subject of the proceedings was in the custody of the respondent who was catering for all his needs.

3. In the affidavit sworn in support of the application, the respondent avers that he has established that the petitioner had sold three shops in the family business that he had set up for her through [Particulars withheld] Limited for Kshs. 9, 623 137.20 and not the sum of Kshs. 2, 100, 000.00 as alleged by her. He further avers that her businesses had been doing well and that the accounts that she had placed before the court had been falsified. He states that after disposing of the shops she had relocated to Kisumu where she was running a similar business, and had ceased living with the issue of the marriage. He asserts that he was the one now leaving with the said minor. He mentions that he sold a plot at Nyari for Kshs. 17, 500, 000.00 and out of the same he gave the petitioner a sum of Kshs. 6, 000, 000.00. He argues that as a result the petitioner has adequate and ample resources to cater for herself. Regarding the repairs to the motor vehicle, he claims that the same had an accident when the petitioner was driving around with her boyfriend.

4. Upon being served with the application, the petitioner swore an affidavit on 6th February 2015 in reply to the Motion. She denies the contents of the affidavit by the respondent and asserts that the circumstances have not changed and that there is no new evidence. She avers that the respondent is keeping the child away from her, has changed his schools and has cut off all communication with her. She asserts that the respondent was in contempt of court.

5. The respondent swore a further affidavit on 5th March 2015. He denies being in contempt of court. He asserts that he has credible information about the transactions relating to the sale of the shops belonging to Chupette Limited, and cites court proceedings in Milimani CMCCC No. 344 of 2014 between the company and the purchaser of the said shops over the same. He states that the information in his supporting affidavit tallies with what is in the pleadings and affidavits filed in that suit. He further states that the petitioner has bought property at Bungoma where she runs a business and runs a sweets and confectionary shop at Kisumu. He avers that the petitioner's fortunes have improved and she does not require any more support by way of maintenance from him.

6. A preliminary objection was raised to the Motion on the basis that the respondent was in contempt of the court's earlier orders by non-compliance. I dealt with the preliminary objection, and delivered a ruling thereon on 23rd September 2016 dismissing the same and paving way for the hearing of the instant application.

7. I directed on 27th April 2017 that the Motion be disposed of by way of written submissions. The parties have complied and have filed detailed written submissions complete with authorities. I have read through the submissions together with the authorities and noted the arguments advanced therein.

8. The Motion is premised on the three grounds that I have cited above. In principle they can be collapsed into one, that the circumstances have changed and that would require that the earlier orders be reviewed. For one, the child is with the respondent and therefore there is no need any more to pay the petitioner for the child's maintenance and for his educational needs. Two, that the petitioner disposed of matrimonial property and got a settlement from the respondent, after which she has set herself up in business in Kisumu and Bungoma, and she is doing well financially and does not need help from the respondent.

9. On the child, the petitioner has conceded in her replying affidavit that indeed the child is with the respondent. She complains in fact that he is being kept away from her and has been enrolled in a different school. That would mean that the respondent is catering for his upkeep and meeting his school needs. It is therefore not necessary for him to pay the petitioner for upkeep of the said minor.

10. On whether the petitioner's fortunes have changed for the better after the disposal of the shops and the payment to her of the settlement by the respondent, I do note that the petitioner in her reply was careful not to breathe a word about any of these fairly specific allegations. Indeed, she only made bare denials, and general statements to the effect that circumstances have not changed and the documents displayed were from dubious sources without any documents to support these assertions. She has also not responded to the clear and specific allegations that she was running successful businesses in western Kenya where she has acquired property. I am inclined to believe the allegations by the respondent to be true, that her fortunes have changed and she does not need any further support from the respondent.

11. On the repairs to the motor vehicle, again there is no response. In any event, if she received a settlement from the respondent, which she does not deny, or sold family property, which she also does not deny, she should be able to sort out the motor vehicle with what she has.

12. On the whole I am satisfied that a case has been made out for grant of the orders sought in the application dated 22nd January 2015 in the terms proposed in prayer 3 thereof. There shall be no orders as to costs. Any party aggrieved by the orders made herein shall be at liberty to lodge an appeal against the same at the Court of Appeal within twenty-eight (28) days.

DATED, SIGNED and DELIVERED at NAIROBI this 14TH DAY OF JUNE, 2018.

W. MUSYOKA

JUDGE