



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**FAMILY DIVISION**

**MISCELLANEOUS CASE NO. 83 OF 2016**

**K D G.....APPLICANT**

**AND**

**DR. H W A.....RESPONDENT**

**RULING**

1. The proceedings herein began by way of a petition dated 8<sup>th</sup> July 2016. It was initially filed at the Constitutional and Judicial Review Division before it was transferred to the Family Division.

2. The parties hereto were married within Kenya and their marriage was dissolved by a court in England in 2012. The parties entered into a consent for disposal of a matrimonial asset to settle debts with the balance being given to the petitioner herein. The petitioner avers that the respondent was appointed Cabinet Secretary in 2013. She states that she contributed to making the respondent who he is now and seeks enhancement of the divorce settlement.

3. The respondent reacted to the petition by filing a reply through an affidavit sworn on 26<sup>th</sup> August 2016. He denies that the petitioner built him up professionally and socially, and blames her for the collapse of their marriage. He states that the divorce court declined to order that he pays to the petitioner maintenance on the basis that both of them were young with equal means to provide for themselves. He concedes the consent order, saying that the same favoured the petitioner, and that it was the petitioner who was actually in occupation of the subject house before sale. He asks for the dismissal of the petition.

4. The petitioner had filed an interlocutory Motion contemporaneously with the petition, wherein she seeks that the respondent be ordered to pay to her monthly maintenance pending hearing and determination of the Motion and the petition.

5. In response to the Motion, the respondent raised preliminary objections through a notice dated 13<sup>th</sup> March 2017. He argues that the issues raised in the petition were exhaustively dealt with by the English court and the petition is therefore *res judicata*, a collateral challenge to the decision of that court and is an invitation to this court to sit on appeal on the said decision.

6. To that notice the petitioner filed grounds of objection in response. She argues that this court has no jurisdiction to recognize the consent order recorded by an English court, the foreign court only dealt with matters that were within its jurisdiction and not assets outside of its jurisdiction, the existence of the consent does not bar the petitioner from initiating a cause in Kenya against the respondent, the petition discloses that the petitioner had been subjected to grave injustice by the respondent and that this court has jurisdiction to deal with the matters raised in the petition.

7. Directions were given on 18<sup>th</sup> May 2017 that the preliminary objection be disposed of by way of written submissions. It would appear from the record before me that only the petitioner filed written submissions, dated 18<sup>th</sup> May 2017, although I was told from the bar that both sides had filed submissions. I have scrupulously perused through the file of papers in this matter and I have been unable to find written submissions from the respondent. I have read through the written submissions and the authorities cited, and I have noted the arguments made therein.

8. From the material before me, what emerges is that the Foreign Judgments (Reciprocal Enforcement) Act, Cap 43, Laws of Kenya, does allow reciprocity where personal matters, such as divorce and like matrimonial causes, are concerned; while the Marriage Act, 2014, does allow registration of foreign decrees and orders in matrimonial proceedings. The case law appears to suggest that there is no bar to commencing proceedings here in Kenya where there are pending similar proceedings abroad or where there were such proceedings previously conducted elsewhere.

9. I am not persuaded that the petition before me is incompetent for lack of jurisdiction on the part of this court. I do not see any bar to the petitioner, who is apparently now resident in Kenya, asking that the respondent, who is also a resident of Kenya, be compelled to maintain her here in Kenya. Whether the provision that the English court made was adequate, or should be enforced in Kenya, is another matter altogether, which, I believe, the parties can urge during the hearing of either the Motion or the petition for the court seized of the matter to make a final determination.

10. In light of the foregoing, I shall dismiss the preliminary objection articulated in the notice dated 13<sup>th</sup> March 2017. Costs shall be in the cause.

**DATED AND SIGNED at NAIROBI this 27<sup>TH</sup> DAY OF JULY 2018.**

**W. MUSYOKA**

**JUDGE**