REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

DIVORCE CAUSE NO. 16 OF 2017

IN THE MATTER OF THE MARRIAGE ACT 2014 OF THE LAW OF KENYA

L.K.S.....PETITIONER

VERSUS

D.S.S.....RESPONDENT

JUDGMENT

1. The Application coming for consideration is the one dated 23.10.2017 seeking the following orders;

> **(i) THAT this Court be pleased to order the Respondent to provide such maintenance to the Petitioner in the sum of 3,972 sterling pounds per month or such higher sum as the Court may deem fit and just to grant pending the hearing and determination of this petition.**

2. The Application is based on the following grounds;

> (a) That the Petitioner and Respondent got married under Civil Law on 26.6.1999
>
> (b) That the marriage was blessed with two (2) issues namely K J K S born on 30.4.2000 and S J S S born on 7.2.2006.
>
> (c) That during the last two years of marriage the Respondent treated the Petitioner and the Children of the marriage with extreme cruelty both physically and Psychologically.
>
> (d) That the Petitioner has resided in Nairobi within the Jurisdiction of this Court until 5.8.2017 when she left the country and went to [particulars withheld], Scotland where she sought refuge and is currently living with her mother.
>
> (e) That the Petitioner is in dire need of maintenance from the Respondent who is a man of means but that he has refused to maintain her and the children.

3. The brief facts of this case is that the Applicant and Respondent got married on 26.6.1999. Their union was blessed with two issues namely;

> **(i) K J K S**
>
> **(ii) S J S S**

4. The applicant has deposed in her Replying Affidavit that throughout the last 2 years of their marriage to the Respondent has treated her and the children of the marriage with extreme cruelty both physically and psychologically and currently the Applicant resides with her mother in [particulars withheld], Scotland where she sought refuge.

5. The applicant has tabulated her current monthly needs as follows:

> House rent £ 900
>
> Council Tax £ 160

Electricity & Gas £ 112

Food & Cleaning £ 650

Clothing £ 250

Entertainment £ 400

Transport £ 500

Internet £ 240

Music -

_____

Total £ 3972

6. I have considered the Petitioner's application dated 23.10.2017 together with the Affidavit filed in support of the Application. I have also considered the submissions by the Applicant. The Respondent filed a Replying Affidavit to oppose the Application.

7. I find that in the case of **WMM v BML [2012] eKLR**, Justice GBM Kariuki (as he then was) observed that:

> ***"In considering a claim for maintenance, regard must be had to the provisions of Article 45(3) of the Constitution of Kenya which recognizes that "parties to a marriage are entitled to equal rights at the time of the marriage, during the marriage and at the dissolution of the marriage". No spouse who is capable of earning should be allowed to shirk his or her responsibility to support himself or herself or to turn the other spouse into a beast of burden but where a spouse deserves to be paid maintenance in the event of divorce or separation, the law must be enforced to ensure that a deserving spouse enjoys spousal support so as to maintain the standard of life he or she was used to before separation or divorce".***

8. The **Marriage Act 2014** attempts to give a guideline on the circumstances under which the court may grant maintenance to a spouse. **Section 77** of the **Act** provides as follows:

> ***"(1) The court may order a person to pay maintenance to a spouse or a former spouse –***
>
> a. ***if the person has refused or neglected to provide for the spouse or former spouse as required by this Act;***
>
> b. ***if the person has deserted the other spouse or former spouse, for as long as the desertion continues;***
>
> c. ***during the court of any matrimonial proceedings;***
>
> d. ***when granting or after granting a decree of separation or divorce; or***
>
> e. ***if, after making a decree of presumption of death, the spouse or former is found to be alive.***
>
> ***(2) the court may order the payment of maintenance to a spouse or former spouse where a decree of separation, divorce or presumption of death is issued by a foreign court and the court may declare that the decree of separation, divorce or presumption of death is effective for the purposes of this section."***

9. I find that the court has been granted wide discretion in determining the maintenance to be paid to a spouse during divorce proceedings and after the granting of the decree of divorce.

10. The **Marriage Act 2014**does not however give the parameters upon which the court may assess maintenance to be paid to a spouse and it is the duty of this court to be guided by the objectives sought to be achieved by such orders.

11. In the case of **R P M v P K M [2015] eKLR,**the Court had the following objectives to consider;

> a. Identify the economic advantages and losses to the spouses as have been contributed by the subsistence of the marriage or its breakdown;
>
> b. Apportion between the parties the attendant expenses of maintaining the issues of the marriage;
>
> c. Provide relief to cover the negative consequences for the spouses as may likely arise from the breakdown of the marriage;
>
> d. Make sufficient provision to enable the parties to become economically self-sufficient within a reasonable duration of time.

12. I find that it is not clear how the Applicant arrived at the figure £ 3972 which she is claiming from the Respondent as interim maintenance.

The Petitioner/Applicant has not annexed any receipts to show that indeed she incurs the amounts sought in the application

13. In view of the Authorities cited above I find that there is no sufficient material placed before me to enable this Court to determine the quantum of maintenance payable to the Applicant. No Affidavit of means has not been filed by the Respondent to enable this Court to assess reasonable maintenance payable. I accordingly direct as follows:

> **(i) That the Respondent be served with a notice to file his affidavit of means within 30 days of this date to enable Court reasonable access.**
>
> (ii) **I also direct that this Petition be set down for hearing within 45 days of this date so that this divorce cause can be determined once and for all**.

DELIVERED, SIGNED AND DATED IN OPEN COURT THIS 19TH DAY OF DECEMBER 2018

ASENATH ONGERI

JUDGE OF THE HIGH COURT OF KENYA, NAIROBI