



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**DIVORCE CAUSE NO. 79 OF 2005**

**MAJOR K N.....PETITIONER/RESPONDENT**

**VERSUS**

**P T K.....DEFENDANT / APPLICANT**

**RULING**

1. The application for consideration is the Notice of Motion dated 28th October 2016. The applicant seeks for an order compelling the Petitioner /respondent to cater for her medical bills. The application is supported by the sworn affidavit of P T K. The application is premised on grounds that; on 29th June 2001 this honorable court ordered that by consent the Lft. Col J K N (RTD) continue providing for the respondents / applicant. That the applicant has been suffering from an illness from an injury sustained some years back and has been in and out of hospital. As a result of the said injury she is unable to work and thus cannot fully sustain and take care of herself. That due to the said injury she was forced into early retirement and does not have any source of income to take care of her medical bill.

2. She avers that while staying at [particulars withheld] she and her children were sprayed with chemicals and robbed and she was defiled during the said incidence, which led her to develop stomach complications as a result of the heinous act. That despite writing to the respondent about her condition he never replied. She avers that the respondent has a duty to assist her in taking care of her medical bills as failing to do so would be in blatant disregard of the law. She avers that she is apprehensive that unless the court intervenes and hears this matter urgently and grant the orders sought there will be blatant violation of the basic tenets of the rule of law and Constitutional precepts of good governance, an infringement of her Constitutional rights.

3. The respondent opposed the said application and filed his replying affidavit dated 2nd August 2017. He avers that the applicant herein has constantly delayed the finalization of the pending divorce cases by making numerous applications to this court. That he and the applicant have been separated for over 16 years such that there is constructive divorce same that decree is yet to issue. That the petitioner is vindictive and revengeful person who is determined to tie him to court all his lifetime making his life painful and miserable. That the applicant has totally misconceived and misinterpreted the orders issued by the lower Court. That the subsisting orders dated 7th February 2001 was varied to Kshs. 7000/- varied the order of 13th January 2001. That he is supposed to pay the applicant Kshs. 7,000/-but out of compassion he has also been sending the applicant Kshs. 28,000 every month without fail. That being constructively divorced and their affair being managed by the court is agreeable to follow only what is ordered by the Court. That the petitioner earns a pension every month and should live within her means as he is also only a salaried employee. That the amount claimed is exaggerated as public health facilities offer the same for free or at a fraction of the cost. That since the applicant can afford treatment in private facilities is proof

enough that the petitioner is capable of taking care of her affairs. He urged the court to dismiss the applicant's application so that the divorce petition before this court can be determined. That the parties have had irreconcilable differences that cannot be sorted out having lived apart for over 16 years. That their 3 sons namely E M K – born in 1988, N M K born 5/2/1990 and P M K born 26/12/1991 are now independent adults and it is very cruel of the petitioner since that have spent most of their growing lives fighting unnecessarily on court. That despite their separation he took care of their children. That E M K their 1st born has refused to work while their second born works in the United States of America and is now married with their third born pursuing a degree in University of Nairobi. That he has been a responsible father to their children despite the separations 16 years ago.

4. In her further affidavit dated 5th April 2017 she avers that she gets Kshs. 28,000 from the respondent with 21,000 going towards rent and 7,000 for maintenance. She avers that the respondent can opt out of paying the Kshs. 28,000 at any time and urges the court to issue a court order for the same. She avers that the respondent evicted her and her children from their matrimonial home in [particulars withheld] Barracks despite a court order against the same. She urges the court to grant an order securing the said amount of Kshs. 21,000/- to avoid unnecessary inconvenience adding that her right knee is in need of physiotherapy and medication and eventually a knee replacement.

### **Determination**

5. From a perusal of the court file it is evident that there are numerous applications mainly from the applicant herein. The 1st divorce petition appears to have been filed back in 1999 as Divorce Cause no. 136 of 1999. The respondent on his part states he is desirous in having the divorce cause pending finally determined so that each of the parties can go their own separate ways.

6. The applicant in her current application seeks to have the respondent compelled by an order of this court to pay her medical bills in addition to the Kshs. 28,000/- given to her by the applicant each month. Kshs. 21,000/- towards the payment of her rent and Kshs. 7,000/- for her maintenance in compliance of the court order of 7th February 2003. The children of the marriage are said to be adults with the youngest pursuing his studies at the University of Nairobi which the respondent is still paying. From the foregoing, it is clear that the respondent has complied with the orders of this court and has continued to carry out his parental responsibility towards his children.

7. The respondent avers that the applicant does receive her monthly pension every month but has not disclosed the amount. The applicant has not rebutted this and has not made any comment on the same. The respondent having paid the rent, maintenance and university fees for their youngest son I find adding on to these responsibilities cost for the applicant's medical treatments will overburden him. Furthermore, the applicant is still receiving her pension every other month amounts, which she has not accounted for and from which she can get proper medical treatment.

8. I do sympathize with the applicant for the misfortune that has befallen her. However, he who demands justice must do justice. The respondent on his part has complied with the orders given by this court I find it would not be fair to add on more financial responsibility than he already has. The applicant should cater to her own medical treatment. I therefore find that the applicant's application lacks merit and dismiss the same. The respondent should continue paying the rent of Kshs. 21,000/- and maintenance of Kshs. 7,000 until the hearing and determination of this Divorce Cause. I urge the applicant to refrain from file any more applications until the divorce matter currently pending before this court is heard and determined. Parties are urged to fix the divorce cause for hearing at the earliest opportune time. Cost be in the cause. It is so ordered.

**Dated, signed and delivered this 14th Day of December 2017.**

**R. E. OUGO**

**JUDGE**

**In the presence of:**

**P K Applicant in person**

**Mr. Kimathi h/b for Mr. Onyango For the Respondent**

**Ms. Charity Court Clerk**