



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**FAMILY DIVISION**  
**DIVORCE CAUSE NO. 160 OF 2006**

**R H.....PETITIONER**

**VERSUS**

**E W K.....RESPONDENT**

**RULING**

1. The Motion dated 26<sup>th</sup> June 2015 seeks review of the judgment delivered herein on 26<sup>th</sup> September 2014. It is contended that the court did not factor the respondent's evidence in making the final determination as it held that she had not testified, yet she gave her evidence on 6<sup>th</sup> July 2011. It is averred that this meant that her prayers for maintenance for herself and her children were dismissed.
2. The petitioner has filed a reply to the application, arguing that the application is belated for it ought to have been brought before the divorce decree was made absolute.
3. I have perused the record and noted that the respondent did testify on 6<sup>th</sup> July 2011. That must have escaped the attention of the court when determining the petition herein.
4. In that testimony she indicated that the marital relationship between her and the petitioner deteriorated, to a point of them separating. She was left with the child. The petitioner was said to have moved on with his life without the respondent. He was accused of abandoning the two as he left the country to work abroad. There are allegations of adultery with a named woman; however that woman was not made a party to the proceedings.
5. On maintenance, she testified that the petitioner had been supporting the child sending money for food and rent. He pays school fees for their daughter. She testified that the allowance he sends her is utilised to pay rent, for house help and gardening, and security, food for themselves and the dog and for fuel for her car. The allowance the petitioner was paying monthly was USD 2, 800.00. She stated that the amount was not enough. The daughter visits the petitioner every summer, and he sends money for her to buy clothes. She testified that was not in gainful employment, although she used to assist her brother in his business.
6. When the petitioner testified on 16<sup>th</sup> October 2008, he indicated that he was paying the respondent an allowance to settle her expenses. He also paid school fees for their daughter, and had taken out a medical scheme for her. He was of the view that he should reduce her allowances as she was also supposed to support herself.
7. Taking into account the testimony of the respondent as against that of the petitioner as regards the

marriage, there is no doubt at all in my mind that the marriage between them had broken irretrievably. The respondent herself also sought dissolution of the marriage. The orders on the dissolution of the marriage should stand

8. On maintenance, I have noted that the respondent is the one with custody of the child of the marriage. She is therefore entitled to support so that she can care for the child. I note that the petitioner pays school fees for the child and meets her other needs. I believe the respondent should make an effort to cater for herself in line with the constitutional provision that parties to a marriage are entitled to equal rights both during and after the marriage.

9. Consequently, I shall review the judgement of 26<sup>th</sup> September 2014, to the extent of making the following orders:-

**(a) That the respondent shall have care and custody of the daughter of the marriage, with the petitioner having reasonable access terms of which are to be agreed upon by the parties, subject to liberty to apply;**

**(b) That the petitioner shall pay school fees for the child of the marriage and meet all other school related needs of the child;**

**(c) That the petitioner shall pay USD 4, 000.00 monthly to meet the subsistence needs of the respondent and the child; and**

**(d) That there shall be no order as to costs.**

**DATED, SIGNED and DELIVERED at NAIROBI this 26<sup>TH</sup> DAY OF OCTOBER, 2016.**

**W. MUSYOKA**

**JUDGE**