



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**FAMILY DIVISION**

**DIVORCE CAUSE NO. 254 OF 2013**

**C K.....PETITIONER**

**VERSUS**

**A R C .....1<sup>ST</sup> RESPONDENT**

**Q N L.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. What is for determination is the Motion dated 30<sup>th</sup> July 2014. It is at the instance of C K, the petitioner herein. She would like the 1<sup>st</sup> respondent compelled to provide her with monthly maintenance of Kshs. 240, 000.00. She would also like the 1<sup>st</sup> respondent to handover car registration mark and number [Particulars Withheld] to her. She would like both respondents to be restrained from selling or alienating property [Particulars Withheld], Nairobi, pending the hearing and determination of the suit. The application is grounded on the grounds set out on the face of the application as well as the facts set out in the affidavit the petitioner swore in support on 30<sup>th</sup> July 2014.

2. She states that she married the 1<sup>st</sup> respondent on 26<sup>th</sup> October 2010, and they set up a matrimonial home and cohabited on [Particulars Withheld], Nairobi. She claims that she was constrained to leave the matrimonial home on 10<sup>th</sup> December 2013 on account of cruelty. The property on which the matrimonial home stands is registered in the name of the 2<sup>nd</sup> respondent, a company beneficially owned by the 1<sup>st</sup> respondent, and whose directors include the 1<sup>st</sup> respondent and his son. The 1<sup>st</sup> respondent's advocates are also said to be shareholders in the 2<sup>nd</sup> respondent. The petitioner avers that she was a housewife, although she managed another property of the 1<sup>st</sup> respondent, called K C, which stands on [Particular Withheld] After she left the matrimonial home, the 1<sup>st</sup> respondent allegedly changed locks at the cottages and placed security guards on it to prevent her access to it. Regarding motor vehicle [Particulars Withheld], the petitioner avers that the 1<sup>st</sup> respondent had bought it for her in 2008, and she had been using it since then, until 18<sup>th</sup> February 2014 when the police forced her to surrender the motor vehicle to the 1<sup>st</sup> respondent. She was forced to rely on taxis thereafter. She avers that after leaving the matrimonial home, she was forced to put up with a friend. She avers that a one-bedroomed house at Karen would cost her Kshs. 90, 000.00 per month as rent. She needed an additional Kshs. 150, 000.00 for her subsistence. She would also like to take up a course on first aid. She alleges that the 1<sup>st</sup> respondent receives a pension of 24, 455.52 Sterling Pound per year and had a fixed term deposit with Faulu Bank. He was also said to

have property in Scotland.

3. A number of documents are attached to the supporting affidavit. There is copy of an instrument dated 28<sup>th</sup> October 2005, transferring [Particulars Withheld] , Nairobi to the 2<sup>nd</sup> respondent. There is also copy of a letter from the Registrar of Companies dated 29<sup>th</sup> September 2011, on the shareholding and directorship of the 2<sup>nd</sup> respondent. The letter indicates that the 1<sup>st</sup> respondent and his son are non-shareholder directors, while M K N and I G M hold one (1) share each in the company. There are also copies of correspondence between the advocates for the petitioner and the 1<sup>st</sup> respondent on [Particulars Withheld] and [Particulars Withheld] There are also copies of documents intended to demonstrate that the 1<sup>st</sup> respondent was receiving a pension, had a fixed deposit at Faulu Bank and had property in Scotland.

4. The 1<sup>st</sup> respondent has responded to the application through his affidavit sworn on 12<sup>th</sup> August 2014. He asserts that he is a non-shareholder director of the 2<sup>nd</sup> respondent, and therefore he has no proprietary interest in the assets of the company which the petitioner is laying claim to. He claims ownership of [Particulars Withheld] and alleges that the petitioner abandoned the matrimonial home and took the car with her without his consent. He only asked the police to help him recover the car. He states that he was forced to sell the car due to financial straits he was undergoing after the petitioner refused to facilitate transfer of property that they had sold to a third party. He pleads that he is unable to buy the petitioner a new car as he himself was using an old car. On the cottages, he accuses the petitioner of failing to manage them, and exposing him to colossal loss. He pleads further that he is unable to provide for the petitioner at the rate that she is demanding. He states that the alleged Scotland property was property that belonged to his family which is currently occupied by his daughter, adding that it was not even situated in Scotland but in Northern Ireland.

5. He refers to an earlier affidavit that he had filed in the matter sworn on 17<sup>th</sup> December 2013, where he had narrated how he had a romantic relationship with the petitioner from 2004 which culminated in marriage in 2010. He stated that he married her when he was 62 years old while she was 32 years old. He stated further that he had been previously married, and had three children from that previous marriage. He alleged that he had bought properties in the Kajiado area that were registered in the name of the petitioner, whose title documents she ran away with when she left the matrimonial home. He stated that the petitioner had not showed any interest in furthering her education. He stated that the petitioner was not working and therefore she could not have contributed to the acquisition of the property.

6. The parties were directed to file their respective written submissions to the said application. The parties complied with the directions and filed their respective submissions on 7<sup>th</sup> October 2014 and 30<sup>th</sup> October 2014. I have carefully gone through them and noted the arguments made therein.

7. On maintenance, it is common ground that the parties had contracted a statutory marriage. At common law, the husband has an obligation to provide for his wife. However, that position appears to have changed. Article 45(3) of the Constitution states 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. It would appear that under the Constitution, parties to the marriage have equal rights in all respects, including maintenance. The Marriage Act, No. 4 of 2014, does not place any obligation on a husband to maintain his wife after separation or even divorce.

8. I note that the 1<sup>st</sup> respondent was aged 63 at the time he married the petitioner, while the petitioner was aged 32. The couple does not have children. At age 32, the petitioner ought to be able to take care of herself. She is still strong and able to fend for herself. The 1<sup>st</sup> respondent is a pensioner. It is him, at his age, who would require support and maintenance from a spritely 32 year old. I do not think that there is basis for grant of the orders sought with respect to maintenance.

9. Regarding the motor vehicle [Particulars Withheld] it is common ground that it was registered in the name of the 1<sup>st</sup> respondent. The petitioner has not furnished material to demonstrate that she contributed to its acquisition. The only claim to it is that the 1<sup>st</sup> respondent had made it available for her use. It is

averred that the same was sold to a third party. The petitioner acknowledges that she saw it with a third party, the person that the 1<sup>st</sup> respondent alleges he sold the car to. I doubt that the same is available for restoration to the petitioner.

10. On [Particulars Withheld], Nairobi, the petitioner claims it as her matrimonial home, on the grounds that it belongs to the 2<sup>nd</sup> respondent, which is a company that the 1<sup>st</sup> respondent is alleged to have beneficial interest. The 1<sup>st</sup> respondent contests that by saying that he is not a shareholder of the 2<sup>nd</sup> respondent but a mere director, and therefore he has no beneficial interest in the property of the company. However, I did hold on 2<sup>nd</sup> October 2015 that the petitioner was, in the suit, seeking to have the veil behind the company pierced so that its real owners are identified. That would then mean if it is successfully established that the 1<sup>st</sup> respondent is the person behind the company, then the petitioner may have some justification to lay claim to [Particulars Withheld], Nairobi as her matrimonial home.

11. In the circumstances, I am moved to disallow the petitioner's prayers for maintenance and return of motor vehicle [Particulars Withheld] to her, but I order that the respondents, whether jointly or severally, shall not alienate [Particulars Withheld], Nairobi in any way during the pendency of the instant suit. There shall be no order as to costs.

**DATED and SIGNED at NAIROBI this 16<sup>TH</sup> DAY OF DECEMBER, 2016.**

**W. MUSYOKA**

**JUDGE**

**DELIVERED and SIGNED this 20<sup>TH</sup> DAY OF DECEMBER, 2016.**

**R. OUGO**

**JUDGE**