



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY DIVISION
DIVORCE CAUSE NO. 91 OF 2005

J J KPETITIONER

VERSUS

S W KRESPONDENT

RULING

1. The Motion dated 17th July 2015 seeks review of the orders dated 31st October 2014. It is brought at the instance of the respondent, **S W K**, seeking that the petitioner, **J J K**, be compelled to pay 933.33 euros towards the maintenance of the child the subject of the proceedings, R W K . She also seeks that the petitioner be held in contempt of the said order of 31st October 2014.
2. The application is grounded on the matters stated on the face of the Motion, as well as on the facts set out on the affidavit in support sworn on 22nd July 2015. It is pleaded that the petitioner has failed to comply with the orders made by the court relating to the maintenance of the minor. Paragraph 10 of the affidavit lists costs that the petitioner is said to have failed to meet. Paragraph 13 lists what are said to be the expenses of the minor that the respondent shoulders without support. They cover clothing, grooming, pocket money, entertainment, holidays and birthday. Other expenses are said to be housing, food, groceries, water, electricity, fuel, daily transport costs and internet. She has attached receipts to support her claims. The total claim according to her works out to 933.33 euros per month. The figure has not been converted to Kenyan shillings.
3. The petitioner has replied to the application through his affidavit sworn on 14th September 2015 and filed herein on 15th October 2015. He states that he has scrupulously complied with the orders of the court. He complains that the expenses compiled by the respondent were in respect to school activities that were entered into without his involvement. .
4. Directions were given on 18th February 2016 that the Motion would be determined on the basis of written submissions to be filed by the parties. Both sides have complied with the said directions and filed their respective written submissions, I have carefully gone through the same and noted the arguments made therein. I have too perused through the authorities placed before me in support of the submissions.
5. The principal prayers in the application are that I order that the petitioner be ordered to pay a sum of 933.33 euros to the respondent for the upkeep of the minor, and that the petitioner be found to be in contempt of court.

6. On contempt of court, the person inviting the court to cite the petitioner for contempt must establish that the petitioner had failed to comply with court orders. I have carefully gone through the record. I have noted the material placed before me by the respondent as well as that by the petitioner. I am not satisfied that there is positive proof that the petitioner had not complied with the orders in question. Contempt of court, even in the context of civil proceedings, is criminal conduct. The standard of proof required to establish the offence is beyond reasonable doubt. I do not have before me proof beyond reasonable doubt that the petitioner has not complied with the orders made by the court in this matter.

7. On maintenance, the prayer is that the court should order the petitioner to pay 933.33 euros for maintenance of the minor, I understand the respondent to be inviting me to review the figure that the court had fixed earlier of Kshs. 15, 000.00. In the first place, the respondent has expressed the figure in euros, it is not clear to me what that would translate to in Kenya shillings. Secondly, it has not been clearly demonstrated how the figure of 933.33 euros was arrived at.

8. I am not convinced that the respondent has made out a case for the orders sought in the application. I shall accordingly dismiss the Motion dated 17th July 2015, but there shall be no order as costs.

DATED and SIGNED at NAIROBI this 16TH DAY OF DECEMBER, 2016.

W. MUSYOKA

JUDGE

DELIVERED and SIGNED this 20TH DAY OF DECEMBER, 2016.

R. OUGO

JUDGE