



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 47 OF 2013

BETWEEN

F M M.....PETITIONER

AND

G M M.....RESPONDENT

RULING

1. The Chamber Summons dated 26th February 2013 is up for determination. In it the petitioner, who is the applicant, seeks to be paid alimony pending the determination of the pending petition for divorce. She asks for monthly maintenance of Kshs. 340,000.00, Kshs.1,000,000.00 towards purchase of furniture for her residence and for an order that the respondent do cater for her medical expenses. These expenses are detailed in her affidavit of means sworn on 26th February 2013.
2. The grounds upon which the application is predicated are set on their face of the application and in the affidavit sworn on 26th February 2013 by the applicant, F M M. She was forced out of the matrimonial home in Karen on account of the respondent's cruelty, leaving the respondent having exclusive occupation of the Kshs.50,000,000.00 matrimonial home which they jointly own. She sustained serious injuries at the time she was being removed from the home and had to be hospitalised for a while. She is a retired school teacher with limited resources and therefore she cannot afford alternative residence and upkeep. She is currently accommodated by her son-in-law. The respondent is said to be shareholder and chief executive of a company where he draws a salary of about Kshs.800,000.00 per month. The couple's children are adults and the respondent therefore does not have any parental responsibilities. She has attached to her affidavit a certificate of marriage, serial number 9520, as evidence of the marriage.
3. Upon being served with the application, the respondent replied to it *vide* an affidavit sworn on 3rd April 2013. He avers that the petitioner left the matrimonial home on her own volition on 23rd February 2008, at a time when the last born child was still a minor. She is said to have left the premises in the respondent's absence and she took away with her a large number of household goods.
4. There is a supplementary affidavit sworn on 2nd May 2013 by the applicant. The said affidavit largely explains the allegations made in the respondent's reply.
5. It was directed on 5th December 2013 that the application dated 26th February 2013 be disposed of by way of written submissions. The petitioner's submissions are dated 12th April 2014 and were filed in court on 13th May 2014. The respondent's submissions are dated 22nd July 2014. Both summarise the facts as deponed in the respective parties affidavits.

6. The parties herein are still in matrimony, for their marriage has not been dissolved and the petition for its dissolution is yet to be heard. Under the current dispensation both parties to a marriage have equal responsibilities to each other. I note in this case that the petitioner is a retired teacher, while the respondent is chief executive of a company. He is said to earn Kshs.800,000.00 per month. These facts are not contested.

7. The petitioner is currently staying away from the matrimonial home. There is ample evidence that she stays with her son-in-law. She is said to have shunned offers of accommodation by the respondent. The figures tabulated in her affidavit of means are contested by the respondent. I note however that he has not proposed what he considers reasonable.

8. I find that the respondent is bound to provide alimony *pendente lite* to the petitioner given that she is out of the matrimonial home and living with relatives. Whether he tried to settle her but was shunned by her may not matter much at this stage.

9. The application dated 26th February 2013 is disposed of in the following terms:-

- a. That the respondent shall pay maintenance to the petitioner at the monthly rate of Kshs.200,000.00 to cover her expenses for food, clothing, rent, fuel, labour, security, entertainment and laundry;
- b. That the respondent shall cater for the petitioner's medical expenses, capped at Kshs.150,000.00 per year;
- c. That the respondent shall make a one-off payment of Kshs.500,000.00 to the petitioner to enable her acquire furniture for her residence;
- d. That the orders (a), (b) and (c) above shall last pending the hearing and final determination of the divorce proceedings herein, and
- e. That costs of the application shall be costs in the cause.

DATED, SIGNED and DELIVERED at NAIROBI this 30th DAY OF January 2015.

W. MUSYOKA

JUDGE