

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 132 OF 2014

BETWEEN

M C S.....PETITIONER

AND

J O O.....RESPONDENT

RULING

1. The application for determination is dated 30th May 2014 and seeks several orders:-
 - a. The eviction of the respondent from Apartment No. ***[particulars withheld]*** Nairobi, ***[particulars withheld]*** Park, Kikambala Road, pending hearing and determination of this application;
 - b. Injunctions to restrain the respondent from selling, alienating, wasting, dealing with, damaging or in anyway interfering with the said property pending the hearing and determination of the divorce cause herein;
 - c. Payment of maintenance to the petitioner of Kshs.200,000.00 per month pending the hearing and determination of the petition; and
 - d. Release of log book for motor vehicle ***[particulars withheld]*** by the respondent to the petitioner.

2. The grounds upon which the application is premised are set out on the face of the application and in the affidavit in support sworn on 30th May 2014 by M C S, the applicant herein. She says that she is the one who pays mortgage at the rate of Kshs.59,085.26 per month on the apartment the subject of the application, yet the said apartment is occupied by the respondent. She lives separately from the respondent for she works and resides at Mombasa while the respondent lives in Nairobi. The children are with her at Mombasa and she meets all their basic needs without any sort of in-put from the respondent. She puts her monthly expenses on the children at Kshs.200,000.00 per month. She pays Kshs.65,000.00 per month for her accommodation, with the children, at Kizingo, Mombasa. The motor vehicle ***[particulars withheld]*** belongs to her, yet the respondent retains the vehicle's registration book without her consent and he has even used the logbook to secure a loan. She would like vacant possession of the Nairobi apartment so that she can lease it out to raise money for her needs and those of the children.

3. Attached to the affidavit in support of the application are various documents to support the applicant's allegations. There is copy of a certificate of marriage serial number ***[particulars withheld]*** as evidence to the fact of the marriage between the parties. There are also copies of three certificates of birth being proof that the couple have three children. There is also correspondence from ***[particulars withheld]*** Academy, Mombasa, as evidence that the children are schooling there. Tuition fees range from Kshs. 100,000.00 to Kshs.250,000.00 per term depending on the grade the children are at. There are also copies of the documents lodged at the Tononoka Children's Court in Children's Case No. 131 of 2014 as evidence that the parties are in court regarding parental responsibilities, custody of the children and their maintenance. There is an agreement of sale as evidence that the applicant owns apartment No. ***[particulars withheld]*** Nairobi, ***[particulars withheld]*** Park, Kikambala Road. The registration indicates that there is a charge in favour of the Standard Chartered Bank (K) Ltd. There is also a sublease in respect of Mombasa/Block ***[particulars withheld]*** as evidence that she is a tenant at Kizingo, Mombasa, where the rent payable is Kshs.65,000.00 per month. There is a registration certificate in respect of ***[particulars withheld]*** indicating the applicant as owner thereof.

4. There is an affidavit of service on record, sworn on 30th June 2014, by GOR'. It indicates that the respondent was served with the application on 14th June 2014 at the residence at *[particulars withheld]* Park, Kileleshwa, Nairobi. He did not sign the copy returned to court on the grounds that he needed to consult his lawyers.

5. There is an undated Memorandum of Appearance lodged in court on 3rd July 2014 by Sijeny & Company, Advocates on behalf of the respondent.

6. The matter was initially placed before me on 12th June 2014, when I directed service of the application and its hearing *inter partes* on 3rd July 2014. On 3rd July 2014, the parties appeared before me through counsel. Miss. Wanyonyi appeared for Mrs. Okata for the applicant, while the respondent was not represented. The matter was stood over to 24th July 2014 for hearing. On 24th July 2014, Miss Wanyonyi held brief for Mrs. Okata for the applicant while Mr. Webale was present holding brief for Miss. Sijeny for the respondent. Miss. Wanyonyi argued the application. Mr. Webale indicated to the court after Miss. Wanyonyi's had made her submissions that he had no instructions to reply.

7. There is nothing on record to indicate that the respondent replied to the application. The application dated 30th May 2014 is therefore unopposed. I note too that even though the respondent was represented in court on 24th July 2014 when the application was argued, counsel appearing for him did not reply to oral submissions of the applicant's counsel.

8. I have carefully perused the application, the affidavit sworn in support as well the annexures attached to the affidavit. I am satisfied that the applicant has made a case for grant of the prayers sought. I have taken note too of the fact that the application is not opposed, despite service. I therefore do hereby allow the application dated 30th May 2014 in its entirety. The applicant shall have costs of the application.

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

W. MUSYOKA

JUDGE