



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU
DIVORCE NO. 9 OF 2012

P M G.....PETITIONER

VERSUS

V W M.....RESPONDENT

RULING

1. By an application dated the 4th day of June 2013, the Respondent hereof, V Wi M, wife of the Petitioner PM G, sought for an order that the Petitioner do provide alimony pendent lite to the respondent in the sum of Kshs. 50,000/= per month pending the hearing and determination of these divorce proceedings filed on the 15th day of November 2012.

2. In her answer to the Petition for Divorce, the respondent accused her husband the petitioner of deserting the matrimonial home at [*particulars withheld*] in year 2009 among other grounds and avers that the marriage between her and her husband is intact and capable of being salvaged, and prayed that the petition be dismissed.

3. In support of her application for alimony pending the hearing and determination of the petition, she contends that the petitioner is a man of means with an approximate income of shs 250,000/= per month from rental income in various houses at Nakuru and Nyahururu, and other business enterprises. The application is supported by an affidavit sworn on the 4th June, 2013.

It is the applicants statement that the petitioner has not maintained her since 2009 and she has been left to take care of the issues of the marriage in terms of college fees and upkeep alone.

4. In his response to the application, the petitioner faults the applicant and states that the applicant forced him to leave the matrimonial home where she lives and has cows, sheep and crops that bring substantial sums of money to her, that she does not share with him.

He further states that he is the one who takes care of all financial requirements of the grown up children's needs including college fees. He further states that it is the Respondent who collects rent on several family properties, and has sufficient funds to cater for her upkeep. Several rent income records have been annexed to the affidavits by both parties to show the income generated from the various rental houses.

5. I have considered the application, the supporting affidavit and all annextures thereto. Similarly, the replying affidavit and annextures thereto have also been carefully considered.

The application and the response thereto do not help this court in its task to determine the current

financial status of each party as concerns their individual incomes. Receipts for rent accounts in various enterprises have been annexed by both. It is not clear from either who are the landlords or rent collectors, for that matter, or which of the two parties collects rent from which properties.

The parties did not attach audited accounts in respect of the rental incomes or any other income, neither have they tried to satisfy the court on who owns the various business enterprises. The court cannot act on unclear and uncertain statements without proof.

6. The Respondent states that the issues of the marriage are all grown up children and working, with their own incomes and further pays college fees for the son who is in college. The applicant states that she is the one who has been taking care of the children's school needs. No prove by the applicant that indeed she is the one who pays college fees and other necessities.

The accusations and counter accusations are but a total confusion that the court is unable to sleve through in this interlocutory stage.

7. One thing is clear however, that each party generates some unspecified income from the family businesses. It is also clear that the petition was filed in the year 2012. No sufficient reason can be deduced from the court records as to why the petition has not been heard since close of the pleadings.
8. Having considered all the submissions by Advocates for the petitioner and the respondent, it is my considered view that the application cannot be adequately canvassed through affidavit evidence alone. The said affidavit evidence can only be comprehensively supplemented by oral evidence. However, to call or demand for comprehensive oral evidence where each party would be subjected to cross examination would in effect amount to full hearing of the petition.
9. As stated in the case **Manjit Singh Amrit -vs- Papinder Kaur Atwal, Matrimonial Cause No. 122 of 2006**, this is a matter that can only be resolved in a full trial as the issues for determination require prove not only by affidavit evidence but also by documentary and oral evidence.

10. From the foregoing, I find that the application dated 4th June 2013 unmerited and order that the parties to these proceedings do move with haste and take the necessary steps to take a hearing date for the petition, and in any event within 30 days of this ruling.

Costs of the application shall be costs in the cause.

Dated, signed and delivered at Nakuru this 30th day of January 2015

JANET MULWA

JUDGE

Ruling read in open court in the presence of:

N/A for Respondent

Chege holding brief for Murimi for Petitioner

Court clerk: Mwai