



**REPUBLIC OF KENYA**

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

**MILIMANI LAW COURTS**

**FAMILY DIVISION**

**DIVORCE CAUSE NO. 149 OF 2014**

**G. J. S.....PETITIONER**

**VERSUS**

**J. J. H. ....RESPONDENT**

**RULING**

1. The petitioner and the respondent got married on 22<sup>nd</sup> November 2012 in Mumbai in India. The former is a Kenyan resident while the later is an Indian resident. The parties stay in Nairobi in Kenya. They ceased to live together and to cohabit on 26<sup>th</sup> September 2013. The marriage has no children. On 8<sup>th</sup> July 2014 the petitioner filed this petition seeking to divorce the respondent on grounds of cruelty and that the marriage has irretrievably broken down. The respondent filed an answer to the petition denying both grounds.
2. The petitioner wants this petition to be heard and determined. The respondent, by her motion dated 4<sup>th</sup> February 2015, seeks the stay of proceedings of this petition pending the hearing and determination of Maintenance Cause No. 23 of 2013 filed on 6<sup>th</sup> November 2013 in the magistrate's court. The Cause was grounded on **section 4** of the **Subordinate Court (Separation and Maintenance) Act (Cap. 153)** which was repealed by the **Marriage Act, 2014**. The subordinate court has granted an interim order of maintenance to the tune of Kshs.80,000/= per month. The matter is pending. In the Cause there was request for an order that the petitioner be compelled to return the respondent into the matrimonial home. The respondent wants that this matter be heard and determined before this petition is heard. She states that she is not a Kenyan citizen and her dependency pass is grounded on the marriage; that if the marriage is ended she will have no status. She also argues that the divorce petition is intended to deny her the monthly stipend on which she survives. The petitioner's case is that the two matters have no relationship and that, in any case, the respondent has not been keen to prosecute the maintenance Cause, now that she is on maintenance.
3. I have considered the application for stay of the proceedings in the subordinate court. It is clear that the two matters are related. The basis of the relationship between the petitioner and the respondent is their marriage. Maintenance was sought by the respondent because of the marriage. There is a problem in the marriage. Whether the marriage should be dissolved, or the parties be ordered to continue in the marriage, is the main issue in their dispute. In any case, it is still possible for a person to be ordered to pay maintenance to a spouse or a former spouse when granting or after granting a decree of divorce. The parties must confront the elephant in the room, as it were. It is for these reasons that I dismiss the application for stay of proceedings in the subordinate court. This is a family dispute and therefore do not order the payment of costs.

**DATED and DELIVERED this 17<sup>th</sup> day of September 2015.**

**A.O. MUCHELULE**

**JUDGE**