

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

DIVORCE CAUSE NO.146 OF 2012

S.O.O.....PETITIONER

VERSUS

E.M.A.O.....RESPONDENT

RULING

On 8th November 2013, this court made a Ruling in respect of an application filed by the Respondent seeking to be granted alimony *pedente lite*. At page 4 of its Ruling, this court stated as follows:

“In this case, the Petitioner's net income has been disputed. The Respondent has not provided proof of the Petitioner's net income to support her claim. There is therefore no justification for the Respondent to claim Kshs.150,000/- from the Petitioner given that the affidavit of means of the parties herein had not also been filed. The financial capacity of each party has to be assessed before an order for alimony can be granted. The Petitioner has averred that he is still maintaining his family by paying rent for Kshs.37,500/- the Respondent and the child's school fees as ordered by the Children's Court.”

The court then ordered the Petitioner to pay the Respondent the sum of Kshs.75,000/- per month as alimony pending the hearing and determination of the case. From the affidavits filed before this court, it is apparent that after the order was issued, instead of paying the said sum of Kshs.75,000/- per month, the Petitioner has been paying the Respondent the sum of Kshs.60,000/- per month. The Petitioner explains this failure to pay the entire sum ordered by the court to the fact that he has continued paying the rent for the house that the Respondent and the issue of the marriage reside. The Respondent sought an order of this court to execute against the Petitioner for the balance of Kshs.15,000/- that has accrued for a period of two years from the time the initial order was made by the court.

When faced with the possibility that a warrant may be executed against him, the Petitioner moved this court pursuant to **Order 51 Rule 1** of the **Civil Procedure Rules** and **Sections 1A, 3A and 63(e)** of the **Civil Procedure Act** seeking to have the orders of this court and that of the Deputy Registrar allowing the Respondent to execute for the accrued sum be stayed pending the hearing of this application. It is the Petitioner's contention that he has complied fully with the order made by this court on 8th November 2013 requiring him to pay maintenance to the Respondent. He was of the view that the court had taken into consideration the fact that he was paying rent for the house that the Respondent resides in at the time it made the said order of maintenance. On her part, the Respondent was not impressed by the argument advanced by the Petitioner. She was of the view that the Petitioner had blatantly and unilaterally disregarded the order that was issued by this court on maintenance by reviewing downwards the monthly amount that he was required to pay her. In essence, she was of the opinion that the Petitioner was frustrating her from executing the legitimate orders of this court.

This court has considered the rival arguments made by the parties herein in their pleadings. It has also considered the written submission filed by counsel for the parties. The issue for determination by this court is essentially whether this court took into account the fact that the Petitioner was paying rent for the house that the Respondent resides in when it made the order that the Petitioner pays maintenance of Kshs.75,000/- per month. From part of the Ruling that has been cited above, it was clear that the court

took into account the fact that the Petitioner paid rent for the house that the Respondent and the issue of the marriage lives in. The said sum of Kshs. 75,000/- per month was to be paid in addition to the rent and the child support ordered by the Children's Court. This court therefore agrees with the Respondent that the Petitioner is insincere when he interprets the decision of this court made on 8th November 2013 to suit his circumstances.

The upshot of the above reasons is that this court finds no merit with the application filed by the Petitioner. The same is dismissed with costs to the Respondent. The Petitioner is ordered to pay the accrued arrears of Kshs.15,000/-per month from the time he fell in default until payment in full. If he fails to pay the same, the Respondent shall be entitled to execute for the same. It is so ordered.

DATED AT NAIROBI THIS 29TH DAY OF OCTOBER 2015

L. KIMARU

JUDGE