



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**FAMILY DIVISION**  
**DIVORCE CAUSE NO. 100 OF 2015**

N.V.....**APPLICANT**

**VERSUS**

H.K.S.....**RESPONDENT**

**RULING**

1. The petitioner and the respondent got married on 4<sup>th</sup> May 2012 at the Registrar of Marriages in Nairobi. They set up a matrimonial home along Riverside Drive in Nairobi. The marriage has no children.

2. On 24<sup>th</sup> June 2015 the petitioner filed this petition seeking the dissolution of the marriage on grounds of constructive desertion and cruelty. She asked to be paid maintenance at the rate of Ksh.100,000/= per month, or be given a lumpsum figure of Kshs.10,000,000/=. The parties have been living apart since 27<sup>th</sup> September 2013. Along with the petition was an urgent chamber application that sought a temporary injunction restraining the respondent, his servants and/or agents, from publishing, printing, circulating or distributing on social media any of her photos in his possession. In the grounds in support, and in the supporting affidavit, the petitioner stated that she feared that once the petition was served the respondent was going to expose to the public and members of the family the photos they had taken during honeymoon and during their marriage. She stated that he had threatened her that if she ever filed a divorce cause against him, or did anything against his will, he was going to expose the photos to her uncles, friends and several public so as to embarrass her.

3. The respondent filed an answer to the petition denying the allegations made by the petitioner. He cross-petitioned for divorce on grounds of cruelty. Regarding the application for injunction, the respondent denied that he wanted to use the photos taken during the marriage for the alleged purpose. He stated that:-

**“the petitioner’s fears that I have in my possession her photographs and that I intend to expose them to the public are therefore unfounded, speculative and purely based on hysteria and paranoia.”**

He stated that he has the photos which were taken during the marriage and are his property the same way **“the petitioner has property to those taken on her account.”** He pleaded his right and freedom of expression.

4. Each party pleaded that the marriage has irretrievably broken down.

5. The application for injunction was certified as urgent and a temporary injunction issued. After the petition and application were served and there was the response, the parties were asked to file written submissions on the application. This was done by their counsel.

6. This application was filed under **order 40 rule 2** of the **Civil Procedure Rules** and **sections 1B** and **3A** of the **Civil Procedure Act**. It should be pointed out that the granting of an interim injunction is an exercise of judicial discretion, and the principles by which the courts have for years been guided in deciding whether or not to grant the injunction are firstly, that the applicant must show a *prima facie* case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide the application on the balance of probabilities (**Giella v. Cassman Brown & CO. Ltd [1973]EA 358**). The purpose of seeking an injunction as to protect the rights of the applicant from violation or threatened violation of an act he cannot be compensated by an award of damages.

7. It is notable that in the prayers contained in the petition, the petitioner prayed that:-

**“c. A permanent injunction be issued restraining the respondent from ever exposing photos of the petitioner taken during their honeymoon or during the exclusiveness of their relationship to any member of the public.”**

However, there was no plea in the petition that the respondent had at any time exposed or threatened to expose any such photos to any member of the public. It will be difficult for the petitioner to call evidence to prove this matter if it was not pleaded. Technically, the claim in the chamber application is not founded on the petition.

8. Be it as it may, it would appear not to be disputed that the couple possess photos taken during honeymoon and during their stay together. The petitioner stated that the photos were strictly intended to be shared between them and not to be shared with any third party. She alleged that the respondent has threatened to expose the photos to their family and friends. If that is done, she stated, it will cause great damage to her reputation both in the society and to her career; a reputation she may not regain. The respondent answered that he has not made any threats to her. He stated that her fear that he might publish the photos is unfounded, speculative and purely based on hysteria and paranoia. He further stated that he had no intention of preventing her from filing for divorce. I have noted in the foregoing that either side considers the marriage to have broken beyond repair. If that is true, and now that each seeks divorce, would the threat still be a legitimate fear or concern? Further, is there any demonstrated action or behaviour on the part of the respondent that would support the fear by the petitioner that he would indeed carry out the threat?

9. In short, on the material before the court at this stage, and considering the legal principles above, it is not possible to find that the petitioner has made a case for a temporary injunction. I dismiss the application and discharge the *ex parte* orders granted on 24<sup>th</sup> June 2015. This is a family dispute. I make no order as to costs.

**DATED and DELIVERED at NAIROBI this 24<sup>th</sup> November 2015.**

**A.O. MUCHELULE**

**JUDGE**