

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE NO. 112 OF 2011

M C K.....PETITIONER

VERSUS

K K K.....RESPONDENT

RULING

1. The application dated 9th October 2011 is for alimony *pendete lite*. It is premised on *Section 25(1)* of the Matrimonial Causes Act, Cap 152 law of Kenya, and Rules 3 and 44 of the Matrimonial Causes Rules.

2. The applicant is the petitioner in the divorce cause. The parties contracted a civil marriage on 24th April 1987.

The petitioner estimates the respondent's monthly income to be Kshs. 100,000.00 per month. She would like to be paid a fifth of that per month that income is to say Kshs.20,000.00 per month.

3. The application was served on the respondent and he has filed his replies to it. He puts his monthly salary at Kshs.46,000.00 and Kshs.30,000.00 from other sources, putting his full monthly income at Kshs.76,000.00. He states that he lives together with the applicant in the matrimonial home at Zimmerman estate, where the respondents settles the utility bills. He pays for food and pays school fees for the children.

4. To this the applicant has responded by her supplementary affidavit sworn on 21st January 2012. She contests that the respondent earns Kshs.76,000.00 per month and that he meets all the monthly utility bills. She however concedes that they live together in the matrimonial home built by the respondent and therefore she incurs no expenses on rent. She also concedes that he meets the school fees for their children given that there are court orders compelling him to do so.

5. Under Rule 44 of the Matrimonial Causes Rules, the alimony *pendete lite* imposed by the court should not exceed 1/5 of the monthly income of the husband. This should also be after taking several factors into account.

6. In this case, I note that the applicant is in employment and having an income. She has always been in employment. She lives in the same house with respondent. It is the respondent who pays school fees. I note that there is a dispute as to who meets the utility bills. The respondent asserts that he meets all the bills but he has provided no evidence. The applicant has put him into strict proof, but has herself not provided proof that she absorbs the burden. I note too that the respondent puts his income at Kshs.76,000,00 per month, while the applicant estimates it to be at Kshs.100,000.00 per month. The gap between the two is not so huge in my view.

7. Taking everything into account, I hereby order the respondent to pay to the applicant maintenance at the rate of Kshs.10,000.00 per month with effect from the date of this ruling.

8. It is so ordered.

DATED, SIGNED and DELIVERED at NAIROBI this 31st DAY OF January, 2014.

W. MUSYOKA

JUDGE