



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
MATRIMONIAL CAUSE NO. 8 OF 2013

W N.....PETITIONER

VERSUS

P B.....RESPONDENT

RULING

Before court is the chamber summons dated 23rd September, 2013 filed under certificate of urgency. In it the respondent/applicant seeks the following prayers:

- “2. **THAT** there be a temporary stay of execution of the ruling delivered on the 23rd August, 2013 pending hearing and determination of this application.
3. **THAT** this Honourable Court does vary and/or modify and/or review the above mentioned ruling by altering the amount payable in terms of reducing the same to reasonable terms.
4. **THAT** without prejudice to prayer three (3) above this court does temporarily suspend the payment of the reduced amount pending the recovery of the applicant who is critically ill.
5. **THAT** the costs of this application be provided for.”

Prayer (2) of the Notice of Motion is now spent temporary orders of stay having been granted by this court on 27th September, 2013. The application was opposed by way of a Replying Affidavit sworn by the applicant/respondent on 26th September, 2013 and filed in court on 27th September, 2013. The application was argued before me on 21st February, 2014 with **MS. MUYAA**, Advocate acting for the respondent whilst **MS. KAYATTA** Advocate argued on behalf of the applicant.

At the centre of this application is the ruling which I delivered in this same matter on 23rd August, 2013 in which I made orders for payment of ‘*alimony pendente lite*’ by the applicant to the respondent in the amount of Kshs. 100,000/= per month. The applicant has in his supporting affidavit averred that he has been diagnosed with two types of cancer for which he is receiving treatment in his home country of Germany therefore his earning capacity has greatly diminished rendering him unable to service the monthly payment of Kshs. 100,000/= as alimony pending suit. He therefore prays that this amount made be reviewed downwards and/or set aside all together. In opposing the application the respondent avers that the applicant has not revealed to court full details of all the accounts he holds in Kenya and the amounts held in those accounts. Ms. Muyaa submits that the applicant only underwent a minor surgical procedure in Germany and that as a citizen of Germany his medical expenses are covered by the state.

I have carefully considered all the affidavits on record and I have also perused all annexures. It must be remembered that what is in issue here is interim alimony pending final orders of alimony which will only be made after a full hearing at which both parties will be at liberty to adduce evidence. In making my earlier ruling dated 23rd August, 2013 I did consider all the relevant information availed to the court. I did also take into account the replying affidavit sworn by the applicant on 25th August, 2013 in which he opposed the grant of alimony to the respondent. I did consider the applicant's own pleadings and his own submissions as to how much he earns. The applicant has submitted that due to ill health his earning capacity has now declined. However he has not adduced any evidence to show that his earnings have in any way declined from what they were in February, 2013 when the court made its ruling. As noted by the respondent in paragraph 15 of her replying affidavit dated 26th September, 2013 the applicant's annexures show that he has been attending treatment since May, 2013. This was well over three (3) months before the court's ruling in August of 2013. It is clear therefore that the applicant has suffered ill health even before the ruling of August, 2013. He has not suddenly become incapacitated. True he may be suffering ill health but he has not satisfied this court that this ill health has had a significant and real detrimental effect on his income. In other words I am not persuaded that the applicant now has no means to meet the alimony payments. He has exhibited from the beginning a reluctance to pay the court ordered alimony and it was only upon threat of execution that this present application was filed.

Having said that this court is not completely insensitive to the vicissitudes of life which affect all of us at one time or another. I am willing to concede that the applicant is having to expend more on his health issues than was previously the case. In order to be fair to both parties I do hereby vary my earlier orders and direct that **with effect from today's** date the applicant shall pay to the respondent a sum of Kshs. 80,000/= as alimony pendente suit. The earlier ordered amount of Kshs. 100,000/= per month remains due and owing for the period from 26th August, 2013 to date. Costs for this application shall be met by the applicant. It is so ordered.

Dated and delivered in Mombasa this 14th day of April, 2014.

M. ODERO

JUDGE

In the presence of:

Ms. Kinyua for respondent

Ms. Kayattta for Applicant

Court Clerk Mutisya