

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI
FAMILY DIVISION
DIVORCE CAUSE NO.79 OF 2005

LT. COL. J K N (RTD).....PETITIONER

VERSUS

P T K.....RESPONDENT

RULING

Before me is an application filed by the Respondent seeking to have the Petitioner committed to civil jail for failure to obey an order that was allegedly earlier issued by this court. The Respondent stated that the Petitioner had failed to settle the sum of Kshs.486,000/- which was ordered paid by the court. The Respondent explained that she needs this money to enable her pay the university fee of their child. The Respondent annexed a copy of the order and the fee demand note from the University in the affidavit in support of the application. It was the Respondent's case that unless the Petitioner was compelled by this court to pay the said sum, he would not willingly do so. The Petitioner filed an affidavit in response to the application. He denied the allegation by the Respondent to the effect that he owed any money to her. He stated that he had complied with all the orders in regard to maintenance that had been issued by the court. He annexed copies of his payslips, bank statements and M-pesa payment records to establish the fact that he had indeed been paying the Respondent the sum of Kshs.28,000/- per month as ordered by the court. He requested the court to make an order for accounts to be taken with a view to establish the veracity of allegations made by the Respondent against him in the application. As regard the payment of the university fees of their son, he reiterated that he had paid the entire fees. In that regard, there were no outstanding fees owing.

During the hearing of the application, the court heard oral rival submission made by the Respondent, who was acting in person and by Miss Mogire who was acting on behalf of the Petitioner. The parties essentially reiterated the contents of the pleadings filed in court in support of their respective opposing positions. The issue for determination by this court is whether the Respondent made a case for this court to commit the Petitioner to civil jail for failure to pay maintenance as ordered by the court. From the outset, it was clear to this court that there was dispute regarding whether or not the Petitioner had paid the maintenance that was ordered by the court. Whereas the Respondent insists that the Petitioner had failed to pay arrears to the sum of Kshs.486,000/-, the Petitioner on his part is emphatic that he has obeyed the maintenance order by paying the sum of Kshs.28,000/- per month. He annexed copies of statements which indicated that he had indeed paid the said sum of Kshs.28,000/- upto and including the month of June 2014. In this court's assessment, the issue in dispute between the Petitioner and the Respondent appears to be that of taking of accounts. The order issued by G.B.M Kariuki J (as he then was) on 27th April 2012 was not specific as to the amount that was said to be outstanding maintenance as at that date. This court is of the view that the only way that a determination can be made on whether or not the Petitioner has been up to date with the payments of maintenance is for the parties to avail all documentations giving a sequential narrative of the payments made since the first order was issued by the court.

These documents shall be presented to the Deputy Registrar of this court who shall undertake a

reconciliation to determine whether any amount is owed, and if so, how much. The parties are therefore ordered to appear the Deputy Registrar of this court on 6th October 2014 for the reconciliation to be done. Meanwhile, the parties shall be at liberty to file documents in support of their respective positions. Thereafter, the matter may be listed before a Judge in the division for further directions. There shall be no orders as to costs.

DATED AT NAIROBI THIS 22ND DAY OF SEPTEMBER 2014

L. KIMARU

JUDGE