



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NUMBER 217 OF 2014

G J S. APPELLANT

VERSUS

J J H. RESPONDENT

R U L I N G

The application before the court is the Notice of Motion dated 3rd June, 2014 and filed by the appellant who was the Respondent in the Principal Magistrate's court matrimonial Cause no. 23 of 2013. It sought a temporary stay of proceedings and execution of the orders of a Ruling of the Principal Magistrate dated 2nd May, 2014, pending the hearing of the application inter partes. This court on 16th June, 2014 granted a partial stay of the orders aforesaid by reducing the monthly maintenance amount for Kshs.80,000/- to Kshs. 40,000/- until the application is heard and determined.

In response to the above stated application and orders, the Respondent filed her application dated the 21st November, 2014 seeking various numerous reliefs, the major of which are: -

- a. *That the orders of reduction of the Respondent's maintenance made by this court on 16th June, 2014, be stayed and the court instead reviews upwards the monthly maintenance from Ksh.80,000/- to Kshs.500,000/- .*
- b. *That the court do issue an interim order pending the hearing of the application, to restrain the Appellant from cancelling and/or sanctioning the cancellation of the Respondent's Dependency Pass as his wife.*
- c. *That pending the determination of the application, this court orders reinstatement to the couple's matrimonial home if the Respondent fails to provide the originally ordered maintenance.*
- d. *That the court corrects the lower court order so as to "credit" the maintenance sum into the Respondent's given bank account not later than 30th of any relevant month.*
- e. *The maintenance amount be payable from the 26th September, 2013 when the appellant chased the Respondent from the matrimonial home.*
- f. *The Appellant provide certain information which would assist the court to establish the true and proper income of the Appellant for the purpose of determining the correct sum of maintenance.*

After preliminary procedures were complied with, this court decided to hear the two applications together because they shared common issues. The court on perusal of the Respondent's application realized

several of the reliefs sought by the Respondent, were in issue before the lower court and cannot therefore be dealt with by this court. This is because the matter is still pending before the lower court and the Ruling appealed from was interlocutory, while the subject of maintenance would appear to be alive before the lower court.

Careful perusal of the two applications would show only that what is relevant presently is whether or not the appellant should continue to pay maintenance at Ksh.80,000/- or as reduced to Ksh.40,000/- until the appeal is heard and determined.

I have considered the application for stay of proceedings and execution by the appellant. I observe that originally the Respondent sought maintenance and accommodation from the Appellant after the Appellant threw her out of the matrimonial home or after the couple separated and the Respondent was forced to leave. The application was grounded under Section 4 of the Matrimonial Cause Act Cap 153. The provision gives the trial magistrate power to make orders for maintenance and accommodation in a case such as this, taking into account the sources and means of both the husband and the wife.

As this court understands, the trial court having decided that the husband do provide maintenance of Ksh.100,000/- and accommodation of Ksh.50,000/- monthly, the husband, herein the Appellant first unsuccessfully sought review of such orders. Later, however, the maintenance and housing was reduced all together to Ksh.80,000/- per month. That aggrieved the husband who then filed this appeal and sought stay of execution of the lower court order pending determination of the appeal. Meanwhile he obtained an interim order which reduced the sum to Ksh.40,000/- until the application is determined. That application is this one.

I have carefully considered the matter and find that the Appellant has not persuaded this court that a stay of proceedings and a stay of execution should be appropriate. The lower court considered Ksh.80,000/- to be on information before it and reasonable monthly maintenance for the Respondent. It based the figure on failure by the Appellant to provide proper information to challenge the figures relied on by the Respondent who had applied. Indeed originally the said court had granted Ksh.150,000/- per month which later the same court reduced to Ksh.80,000/-

It is noted that the Respondent has neither accommodation nor maintenance presently. That is not denied by the Appellant. What is in issue is whether or not the granted amount is proper and lawful under the relevant law. That is likely to be investigated during the prosecution of the pending appeal. Until then however, the court is not willing to reduce the sum decided by the lower court which had relevant material and information to determine the issue. In any case, leaving the amount at that level will not seriously prejudice the Appellant. This is because maintenance is not short time matter and if there will be overpayment, in case the court later reduces the amount, the Appellant can easily recover such overpayment from future payments.

Having come to the above conclusion, I find no reason to justify the amount at Ksh.40,000/- per month. In the circumstances, the monthly maintenance shall revert to Ksh.80,000/- with effect from 16th June, 2014 when the alteration was ordered by this court.

As to stay of proceedings, it will be in the interest of justice that the suit or application in the lower court be hastened so that each party is set free either to rejoin in the matrimonial home or go one's way.

The parties should avoid prolonging the suit either here in this appeal or below in relation to the proceedings pending.

The Respondent requested this court to enhance the maintenance from Ksh.80,000/- to Ksh.500,000/-. This court, however, has no jurisdiction to do so. If she was dissatisfied with lower court's determination, she had opportunity to appeal or cross-appeal to this court. She failed to do so. In any case the issue is still the jurisdiction of the lower court which under correct or suitable circumstances can review the matter or this court in the pending appeal.

I make the following orders.

ORDERS

1. **The Appellants application for stay of proceedings and execution is hereby rejected with no order as to costs.**
2. **The Respondent's application for enhancement and other reliefs is hereby also denied and dismissed on the ground that such issue should be handled by the relevant court with no order as to costs.**
3. **The monthly maintenance and accommodation amount**
4. **is reverted to Ksh.80,000/- with effect from 16th June, 2014.**
5. **The arrears arising from (3) above shall be paid in 6 monthly equal instalment together with the monthly maintenance of Ksh.80,000/- with effect from 30th December, 2014.**

Dated and delivered at Nairobi this 19th day of December, 2014.

D A ONYANCHA

JUDGE