

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MILIMANI

CIVIL APPEAL 33 OF 2001

C O.....APPELLANT

VERSUS

R O O.....RESPONDENT

RULING

The Motion dated 23rd April 2013 seeks variation and/a or setting aside of orders made on 19th January 2010 by Dulu J. The applicant would like the monthly maintenance raised from Kshs.10,000.00 to Kshs.30,000.00, or in the alternative, the said orders vacated altogether and replaced with the earlier orders of Rawal J, as she then was, made on 18th September 2008.

The applicant's position is that the respondent has not complied with the orders of Dulu J. The other reason advanced for the filing of the application is that her needs have multiplied as she has had an accident, and she needs regular medical care.

The application has been replied to. The respondent opposes the application. His case is that he cannot afford the amount demanded of Kshs. 30,000.00 per month, as he is ever struggling with the sum of Kshs.10,000.00. In any event he is at the Court of Appeal challenging the amount imposed by Rawal J of Kshs.35,000.00. He argues that he is old and retired and that he receives a small pension of Kshs.17,303.00. After paying the applicant Kshs.10,000.00, he is left with Kshs.7,303.00 to spent on himself and his other dependants. On the delay in remitting the monthly Kshs.10,000.00, he states that its because of lack of money.

The matter is highly contentious. It originated at the magistrates' courts, came to the High Court on appeal, and it is now to the Court of Appeal on a second appeal. In the appeals, the respondent is contending that the amounts of monthly maintenance he has been condemned to pay to his former wife are exorbitant and unsustainable. The trial court had ordered him to pay to her a monthly sum of Kshs.40,000.00. He was to also settle the monthly electricity, water and telephone bills, and to provide her with a vehicle which he was to maintain. He appealed against these orders. The High Court ordered him to maintain her at the monthly rate of Kshs.30,000.00 and to settle her electricity, water and labour expenses at the Homa Bay home. The telephone bills payable by the respondent were capped at Kshs.5,000.00 per month. He thereafter challenged this at the Court of Appeal. When he sought stay of the High Court decree pending, the High Court granted stay on condition that he paid to his former wife Kshs.10,000.00 per month as maintenance on top of meeting the expenses for electricity, water, labour and telephone. The stay order was to lapse in the event of default.

The court should make such orders as are capable of being complied with by the parties. The objective of court orders, particularly in matters that are civil in character, should not be punitive. The court should strive to do justice between the parties.

In this case I note that the respondent is an elderly retired civil servant. He has three wives. It would appear that he has children who are still in school or college. The record placed before me shows that he has largely complied with the orders of Dulu J. The High Court has intervened twice and revised the rates of monthly maintenance. The same issue is on appeal. Taking these factors into account, I am of the view that I should not disturb the *status quo* lest I create more confusion. The respondent appears to be doing the best he can in his circumstances. The applicant, who appears to be younger, should also do her part.

I decline to grant the orders sought. Each party shall bear their own costs.

SIGNED DATED and **DELIVERED** in open court this **15th** day of **August, 2013**.

W.M. MUSYOKA

JUDGE