



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
DIVORCE CAUSE NO. 5 OF 2012

BETWEEN

S M R.....PETITIONER

AND

P H S.....RESPONDENT

RULING

Her case is that she was forced out of the matrimonial home by the petitioner and she is now residing with her father. She does not work and does not have income and therefore she cannot pay for rent, her maintenance and is unable to pay for her own upkeep. She would like to be independent of her father, by renting a house that she can move into. Her rent and living expenses work out at Kshs.190, 000.00 per month, covering rent, food, clothes, utilities, house help, health insurance, vehicle running, insurance and maintenance. She says she has identified a house whose rent is Kshs.85,000.00 per month. She would like Kshs.1,200,000.00 to purchase furniture for the said house. She is also asking for Kshs.1,100,000.00 for a motor vehicle. She would like the petitioner to fund this. She avers that the petitioner holds shares in blue-chip companies valued in the region of Kshs.8,000,000.00. She concedes that she is unaware of what the petitioner earns.

The application was argued on 11th October 2012 before Njagi J. The parties agreed by consent to open the safe deposit box at the CFC Bank and to divide the contents between them based on the ownership thereof. This disposed of the issue of the wedding gifts. It was argued for the respondent that she needs some money to keep her afloat, while it was argued for the petitioner that his disposable income is insufficient to cater for the respondent's demands.

This leaves **Section 25 of the Matrimonial Causes Act**, which empowers the court to make such orders as it may deem just in the event of being confronted with an alimony application such as the one now before me. Under this provision the court may order provision for a wife by her husband. The order will depend on the circumstances of each case.

She would like the petitioner to avail a car to her. There is no evidence that the petitioner himself owned one during coverture or even thereafter. It is not disclosed by both parties who owned the car that the respondent alleges was available to her during the time she was living with the petitioner's family. I am

persuaded that the said car did not belong to the petitioner. There is therefore no justification for the respondent to claim to have a car availed to her.

‘Parties to a marriage are entitled to equal rights at the time of the marriage during marriage and at the dissolution of marriage.’

‘In light of Article 45(3), the criterion in determining the rights of spouses in a marriage must treat the husband and wife as equals and neither has a greater or lesser obligation than the other in relation to maintenance. In short, in cases where, as here, spouses have no children, a wife does not enjoy advantage over a husband or vice versa and the age-old tradition in which men were deemed to be the sole breadwinners and to carry the burdening of maintaining their spouses does not hold true anymore. Under the Constitution, the respondent has a duty to support and maintain herself no less than the petitioner has to support himself and there is no greater obligation on the part of the petitioner to support himself than there is on the part of the respondent to support herself. No spouse who is capable of earning should be allowed to shirk responsibility to support himself or herself or turn the other spouse into a beast of burden but where a spouse deserves to be paid maintenance in the event of divorce or separation the law must be enforced to ensure that a deserving spouse enjoys spousal support so as to maintain the standard of life he or she was used before separation or divorce. The financial capacity of the spouses has to be examined before the court makes a ruling as to whether a spouse should pay maintenance and if so how much.’

In view of what I have stated above concerning the effect of **Article 45(3) of the Constitution** on **Section 25 of the Matrimonial Causes Act**, and the evidence that has been placed before me concerning the circumstances of the parties hereto, I find that the summons dated 11th July 2012 is without merit. I hereby dismiss it. Each party shall bear their own costs.

DATED, SIGNED and DELIVERED at NAIROBI this 15th DAY OF August, 2013.

W. M. MUSYOKA

<p justify;"=""> **JUDGE**