

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

CIVIL APPEAL NO.2 OF 2009

MAURICE KHATERA MUNYIFWA APPELLANT

V

TABITHA OKAYO RESPONDENT

JUDGEMENT

MAURICE KHATERA MUNYIFWA, the Appellant, is the husband of **Tabitha Okaya, the Respondent**. They got married on 10th January 1990 under the African customary law of the Luhya and cohabited as man and wife until the year 2008 when the Respondent alleged that she had been forced out of their home at Ruiru and denied access to their matrimonial home on **Plot Number Ruiru/East Ruiru/99/100**. The couple had no child. The Respondent went to court and filed Separation Cause No.35 of 2008 in Milimani Commercial Courts in which she prayed for a separation order and maintenance of Shs.35,000/= per month.

On 9th December 2008, the Hon. M. Kiema, Resident Magistrate, made orders (1) Compelling the Defendant to release to the Respondent her personal belongings left behind in the 4 bed roomed matrimonial home in Ruiru (on Plot No.Ruiru/East Ruiru/99/100) and (2) ordering

the Appellant to pay to the Respondent a monthly sum of Shs.35,000/= on account of her general maintenance failing which the same would be deducted from the Appellant's salary and/or income.

It is against these orders given on 4th December 2008) that the Applicant appealed.

In her Memorandum of Appeal dated and filed in court on 12.1.2009, the Appellant set out 14 grounds of Appeal. I have seen the formal orders extracted from the Ruling of the learned trial magistrate but I have not seen the full Ruling. I have also not seen the lower court file. I am not sure why the Deputy Registrar did not call for the lower court file. The advocates for the parties have not annexed the ruling of the trial court containing the orders appealed against. It is in that ruling that the reasons for the orders appealed from are contained. This court as the first appellate court needs to peruse and evaluate it before making a decision on the appeal.

Accordingly, I direct the Deputy Registrar to call for the lower court file from the Chief Magistrate Court at Milimani Commercial Courts in Maintenance Cause No.35 of 2008 and place it before me in this appeal.

Parties shall return to court on 22.3.2012 when this matter shall be mentioned for further directions.

Dated at Milimani Law Courts, Nairobi, this 16th day

of February 2012.

G.B.M. KARIUKI, SC

JUDGE

COUNSEL APPEARING

Ms Mithamo of Wafula Simiyu & Co. Advocates for the Appellant

Mr. Obwae of Odawa Ombayo & Ochich & Co Advocates for the Respondent

Mr. Kugwa - Court Clerk