

Z.Y.S.A PETITIONER

VERSUS

Y.S.A. RESPONDENT

RULING

1) The Respondent seeks a review of the decision of this court of 29th June 2012 ordering alimony pendete lite at Kshs.100,000/= per month from the date of the application. It is proposed that the maintenance be set at Kshs.30,000/= per month with effect from the date of the ruling rather than the date of the application. The grounds of this application for review are principally that the Respondent's income has dwindled following his illness with Gall Bladder since 2005.

2) The Petitioner/Applicant opposes the application for review on the ground of lack of good faith on the part of the Respondent pointing out that the Respondent's financial and medical status were not new matters to justify review and that the Respondent has not paid any alimony as ordered by the court or part thereof as he has proposed in his review application since the order was made, and that the Respondent makes no reference to the Kshs.15,000,000/= deposited in fixed deposit accounts as established by the court in its ruling, save that his savings had been used up in treatment.

3) Two issues arise for determination in this review application, namely: whether the order for payment of alimony pendete lite should be effective the date of the application therefore and whether the amount of alimony should be reviewed to Kshs.30,000/= as suggested by the Respondent or to any other amount.

4) I have considered the application and I find that on first principles the alimony pendete lite, which is a provision for the maintenance of the wife pending determination of matrimonial proceedings, must accrue from the entire period of pendency of the cause so that it should be paid from the date of application to the date of determination of the cause.

It is trite law that an untruthful Applicant disentitles himself from favourable discretion of the court. This is the basis of the principle of full disclosure the breach of which entitles the court to take away any advantage or benefit that the untruthful Applicant may have obtained before the discovery of the breach. See **R v. Kensington General Commissioners of Income Tax Ex. P. Edmond de Polignac (1917) 1 K.B. 486**. The Respondent who seeks review of the court order of 29th June 2012 in the position of an Applicant, who is required to make full frank disclosure.

5) Save for the suggestion that his savings had been used in medical care, the Respondent has not made any reference to the Kshs.15,000,000/= fixed deposit or of interest accruing thereon, both which are means of the Respondent required to be set out in the affidavit of means in response to all applications for alimony pendete lite, whether filed separately or under the Petition for separation or Divorce. See Rule 44 of the Matrimonial Causes Rules made under the Matrimonial Cases Act. Moreover, the Respondent has not shown any good faith by paying either the monthly amount of alimony pendete lite ordered by the court or his suggested reduced amount since the order was made on 29th June 2012.

6) As I found in my ruling of 29th June 2012, the expenditure claimed by way of alimony pendete lite by the Petitioner is reasonable and I expect that the Petitioner must have had to seek alternative funding for the expenditure, and it must therefore be recoverable from the Respondent with effect from the date of the application.

7) I have noted from the dates of the financial statements and on the Medical Report that the Respondent had the information therein contained and could have produced it before the court with exercise of due diligence. In accordance with the Court of Appeal decision in **Touring Cars (K) Ltd v. Mukanji (2001)**

1 EA 261, I hold the financial and medical information offered by the Respondent are not new matters which could not have been produced before the court when considering the decision sought to be reviewed.

8) In the circumstances, I dismiss the Respondent's application for review of the court order of 29th June 2012 with costs to the Petitioner.

EDWARD M. MURIITHI

JUDGE

Dated and delivered this 28th day of September 2012.

F. TUIYOTT

JUDGE

In the presence of:

Mr. Shimaka for the Petitioner

No appearance for the Respondent

Miss Moriasi - Court Clerk