



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
DIVORCE CAUSE NO.128 OF 2005

E.A.P.H.....PETITIONER
VERSUS
P.A.H.....RESPONDENT

RULING

Before me is an application by the respondent purportedly made under **Section 32** of the **Matrimonial Causes Act** and **Rule 43** of the **Matrimonial Causes Rules** seeking orders of this court to stay the orders earlier issued by the court on 23rd March 2006 pending the hearing and determination of this application. The respondent further prayed that the court varies the order issued on 23rd March 2006 by temporarily suspending it. The grounds in support of the application are stated on the face of the application. The application is supported by the annexed affidavit of the respondent. He swore a further affidavit in support of the application. The application is opposed. The petitioner swore a replying affidavit in opposition to the application.

At the hearing of the application, this court heard rival oral submissions made by Mrs. Wambugu for the respondent and by Mr. Osmond for the petitioner. I have carefully considered the rival arguments made in this application. The facts of this application are more or less not in dispute. The petitioner and the respondent were husband and wife before they were divorced on 7th November 2008. Prior to the hearing of the divorce case, the respondent was ordered by the court to pay to the petitioner monthly maintenance of Kshs.50,000/-. According to the petitioner, the respondent erratically paid this amount to the extent that the respondent is now in arrears of the sum of Kshs.1.3 million. The respondent has craved for orders of the court that the said order of maintenance be suspended in light of his dire financial circumstances. He deponed that his only source of income, the Baringo Island Camp, has lately not been doing well financially due to the downturn in business. He therefore urges the court to suspend the payment of the said maintenance until the time he will be in a position to settle the same. The petitioner does not believe the assertion by the respondent that he is in a precarious financial situation. The petitioner doubts that the respondent's business is doing as badly as alleged by the respondent. It is the petitioner's case that if the respondent's business was doing so badly, without doubt the business would have gone bankrupt during the material intervening period. The petitioner urged the court to compel the respondent to closely evaluate the respondent's claim and find the same to be unworthy of credit.

Having evaluated the facts of this case, it was clear to the court that the respondent has been unwilling to abide by the order earlier issued by this court compelling him to pay monthly maintenance to the petitioner. It is this court's view that the respondent's reluctance to pay the said monthly maintenance that was ordered by the court was partly borne by the respondent's belief that upon the petition for divorce being granted, he would not be liable to pay any maintenance to the petitioner. The respondent did not

present to the court any cogent evidence to support his claim that since 31st May 2008 to date, the circumstances of his business had failed to improve. This court is in agreement with the petitioner that with the sort of turnover by the business in terms of revenue and expenditure, it is improbable that the respondent would be completely unable to pay the monthly maintenance ordered by the court. The respondent has not shown any good faith by at least paying part of the monthly maintenance ordered by the court. It appears that the respondent's mantra is that he can't pay and therefore he won't pay.

It is this court's considered opinion that the present application has not been made in good faith. The application was made specifically for the sole purpose of the respondent avoiding to pay the monthly maintenance ordered by the court. The respondent has done nothing towards the settlement of the outstanding arrears. The application therefore lacks merit and is hereby dismissed with costs to the petitioner.

DATED AT NAIROBI THIS 9TH DAY OF MARCH, 2011

**L. KIMARU
JUDGE**