



REPUBLIC OF KENYA

IN THE HIGH COURT

AT NAIROBI

DIVORCE CAUSE NO. 154 OF 2008

R.P.M..... PETITIONER

VERSUS

P.K.M..... RESPONDENT

RULING

On 3rd November 2011 after the court had just delivered the Ruling declining to disqualify itself, **Mr. E. Ondieki**, the Learned Counsel for the Respondent, informally applied for an order of stay of the earlier ruling delivered on 24.10.2011 in which the court enhanced maintenance from Shs.60,000/= to Shs.250,000/= per month.

Mrs. Judy Thongori, the learned counsel for the Petitioner, opposed the application. I reserved my ruling to today, 10th November 2011.

I have duly considered the application for stay and the opposition to it and the reasons advanced by each party which are recorded. The policy of the court in matters of stay of its own orders when an appeal is preferred against such orders is that, as a general Rule, the court will exercise its best discretion in a way so as not to prevent an appeal, if successful, from becoming nugatory. The court will normally grant stay where circumstances of the case so require.

The ruling in respect of which the order for stay is being sought was delivered on 24.10.2011. The Respondent through his counsel did not apply for stay after the delivery of the ruling on 24.10.2011 or soon thereafter. Instead he applied for the court to disqualify itself. The court declined to disqualify itself and rendered a decision to that effect in the ruling delivered on 3.11.2011.

The application for stay was made after the latter ruling. There is light shed by Order 42 Rule 6 of the Civil Procedure Rules which requires that for stay to be granted, the court must be satisfied that there is sufficient cause and that the application for stay is made without unreasonable delay, and further that unless stay is granted, the Applicant may suffer substantial loss.

In this case, the Respondent took just about two weeks to apply informally for stay. Rule 6(5) of Order 42 of the Civil Procedure Rules reflects the need for the application for stay, **if made informally**,

to be made **immediately following delivery of ruling** or judgment. A period of close to 11 days from 24.10.2011 to 3.11.2011 which the Respondent has taken cannot be said to be in conformity with Order 42 Rule 6(5). In any case, the delay of close to 11 days is inordinate. There was no seriousness in making the application which, prima facie, seems to have been prompted by the outcome of the application for disqualification.

It is my finding that the informal application was not made immediately after the delivery of the ruling on 24.10.2011. There was inordinate delay. The nature of the litigation does not give rise to any special circumstances so as to require the court to grant the order for stay. The application is dismissed with costs to the Respondent.

Dated at Milimani Law Courts, Nairobi, this 10TH day of November, 2011.

G.B.M. KARIUKI, SC

JUDGE

COUNSEL APPEARING

Mrs. J. Thongori, Advocate for Applicant

Mr. E. Ondieki, Advocate for the Respondent

Mr. D. Mutisya, Court Clerk