

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

DIVORCE CAUSE NO.57 OF 1992

N.S.G.....PETITIONER

VERSUS

S.C.G.....RESPONDENT

RULING

By an application dated 4th May 2010 made under the provisions of **Sections 3, 25 and 26** of the **Matrimonial Causes Act** and **Rules 58 and 59** of the **Matrimonial Causes Rules**, the petitioner sought this court's order to direct the respondent to pay all due and outstanding arrears of maintenance amounting to Kshs.1,969,950/- as at 1st May 2010 as was ordered by this court on 17th October 2000. This amount is required to be paid together with interests thereon. The petitioner further prayed for the committal of the respondent to civil jail if he fails to comply with the orders of this court. The petitioner further prayed for an order of the court to compel the respondent to secure any future payment that he shall be required to make to the petitioner. 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 petitioner. The application is opposed. The respondent swore a replying affidavit to the application. He deponed that he was no longer in gainful employment and could not therefore pay the maintenance that was ordered by the court. He stated that he suffers from hypertension and diabetes. The respondent deponed that he was willing to have the said arrears of maintenance defrayed from his entitlement after the suit property which is the subject of the suit No [particulars withheld] is severed.

Counsel for the parties to this application filed written submissions in support of their clients' positions. At the hearing of the application, counsel for the parties agreed that the issues in dispute would be determined by the court considering the said written submissions. This court has read the written submissions. It has considered the pleadings filed by the parties herein in support of their respective opposing positions. The issue for determination by this court is whether the prayers sought by the petitioner can be granted by this court. Certain facts are not in dispute. It is not disputed that this court issued an order compelling the respondent to pay maintenance to the petitioner. The respondent does not dispute the averment made by the petitioner that he owes the petitioner a sum of Kshs.1,969,950/- as at 1st May 2010. The respondent does not dispute that he has been in arrears. He attributes his failure to comply with the court order to the fact that he is no longer in employment. He further states that he is of ill health and is therefore unable to pay the maintenance ordered by the court. It appeared to the court that the respondent was essentially saying that he cannot comply with the order of the court because he is not in a financial position to pay the amount decreed in favour of the petitioner. This court is of the opinion that the respondent's explanation is not satisfactory. The respondent must comply with the order of the court or be prepared to face the consequences. From the court record, it is apparent that the respondent's behaviour has a historical antecedent. It is not the first time that he has failed to pay maintenance until compelled to do the needful by the court.

This court will give the respondent an opportunity to make a satisfactory offer on how he intends to liquidate the decretal sum. The respondent shall appear before this court on 18th November 2010 to show cause why he should not be committed to civil jail for failing to abide by the orders of this court in regard to the payment of maintenance to the petitioner. The petitioner shall serve the respondent within three (3) days of today's date with the said notice to show cause. The petitioner shall have the costs of the application.

DATED AT NAIROBI THIS 8TH DAY OF NOVEMBER, 2010

L. KIMARU
JUDGE