



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Divorce Cause 67 of 2006

EKK PETITIONER

VERSUS

PKM..... RESPONDENT

RULING

The application by way Chamber summons dated 29th January, 2009 is filed under Rules 3(3), 58 and 59 of the Matrimonial Causes Rules and all other enabling provisions of law.

The Applicant seeks for orders:

- 1. That this Honourable court be pleased to order the committal of the Respondent to civil jail for failure to pay arrears of maintenance of KShs.675,000 for the period December, 2007 to January, 2009.**
- 2. That this Honourable Court be pleased to give such further or other directions as it may deem fit and just to grant.**
- 3. That the costs of this application be provided for.**

The said application is supported on the grounds set forth on its face and on the supporting affidavit sworn by the Applicant EKK on 26th May, 2008.

It is averred that the Decree Nisi with Penal Notice was served on the Respondent on 19th March, 2008. The affidavit has annexed the order and its acknowledgment in writing by the Respondent and an affidavit of service of one WMV sworn on 19th March, 2009 (Annexure 1 and 2). It is also averred that as at January, 2009 the payment outstanding for maintenance awarded stand at KShs.675,000. The Respondent has failed to pay maintenance at all.

It is on record that by the Judgment of 30th November, 2007, the court ordered the Respondent to pay Shs.45,000 per month.

The Respondent has not responded to those averments but has filed grounds of opposition dated 5th June, 2009.

In short, it is contended that the application offends the provisions of order XXI Rules 18 and 32(1) of the Civil Procedure Rules and thus the orders prayed for are not available to the Applicant and cannot be granted.

It cannot be disputed that the Matrimonial Act with its Rules is a code by itself and the all relevant procedural laws have been specified in the Matrimonial Causes Rules. Wherever it was sought to apply the Civil Procedure Rules, the said rules make specific mention of the application of particular part of Civil Procedure Rules. I can cite Rule 9 (service out of time), Rule 25(3) (appointment of Examiner) and Rule 62 (pauper). I may note that otherwise the Rules are very specific in the provisions as regards procedure to be adopted in matrimonial proceedings.

Rule 58 deals with Attachment and committal and Rule 59 deals with Enforcement.

They stipulate:

“58. An application for attachment or committal shall be made to a judge, and any person attached or committed may apply to a judge for his discharge.

59. (1) In default of payment to any person of any sum of money at the time appointed for the payment thereof, an application may

be made to a judge in chambers supported by affidavit (of service of the order and of non-payment), and the judge may make such order as to attachment of the person or of the property of the person so failing to pay as in the circumstances may seem expedient.

The procedure for attachment and committal thus are detailed under the aforesaid provisions without mentioning application of any provisions from the Civil Procedure Rules.

I shall thus tend not to agree on the grounds of opposition based on specific provisions of the Civil Procedure Rules which are not automatically applied to matrimonial proceedings.

The Respondent was duly served and has not come before the court as stipulated in Rule 59 or otherwise.

I thus reject the grounds of opposition and having satisfied that the Respondent was duly served and that he has defaulted in compliance of the court order I grant the application dated 29th January, 2009 as prayed.

I grant the order of committal of the Respondent to Civil Jail for a period of one month unless he pays the claimed sum of Shs.675,000 within 15 days from the date hereof. In failure of such payment, the order of committal to issue without any further application.

The Respondent shall also pay the costs of the Application.

Orders accordingly.

Dated, Signed and Delivered at Nairobi, this **16th** day of **July, 2009**.

K.H. RAWAL

JUDGE

16.7.09