



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Matrimonial Cause 122 of 2006

MANJIT SINGH AMRIT.....PETITIONER/RESPONDENT

VERSUS

PAPINDER KAUR ATWAL.....RESPONDENT/APPLICANT

RULING

When this matter last came up before me on 07.06.07, representation was as follows:-

- a) The petitioner continued to be represented by learned counsel, Mr O. Oduol of Ochieng', Onyango, Kibet & Ohaga Advocates;
- b) The respondent who was previously represented by learned counsel, Mrs M.M.N Michuki of A.F. Gross & Company Advocates was this time represented by learned counsel, Mr. M. Billing of Guram & Company Advocates.

Respondent's counsel said he was ready to proceed with the respondent's chamber summons dated 12.10.06 but that before doing so, he sought directions regarding notice of motion dated 17.10.06. In his view the notice of motion had been heard and determined vide this court's Ruling delivered on 20.11.06. He, however, pointed out that in that Ruling, the court had indicated that the notice of motion would be a response to the chamber summons. Respondent's counsel in essence questioned whether the petitioner's notice of motion, which in his view had been determined, could be a proper response to the chamber summons.

In response, petitioner's counsel said that what respondent's counsel had stated regarding the notice of motion was the position, i.e. that he agreed that the notice of motion had been determined vide the Ruling of 20.11.06. Petitioner's counsel added, however, that the same Ruling also determined the chamber summons dated 12.10.06. It was petitioner's counsel's view that vide her chamber summons, the respondent had asked the court to determine interim maintenance under rule 47 (1) of the Matrimonial Causes Rules and that the court determined the maintenance.

Petitioner's counsel also said that the petitioner had filed an application for Directions/Registrar's Certificate and that the court had given directions that the parties should proceed to trial. I drew attention to the fact that there appeared to be no application for Directions/Registrar's Certificate in the court file, whereupon both counsel acknowledged that neither of them had copies of the application for Directions/Registrar's Certificate. Petitioner's counsel then said he took the position that the parties should take directions on the Registrar's certificate and proceed to trial to enable the court to determine the matter substantively.

In reply, respondent's counsel maintained that since the Ruling of 20.11.06 opens with a statement that it relates to the petitioner's notice of motion dated 17.10.06, it does not relate to the respondent's chamber summons dated 12.10.06.

There was controversy between the parties as to what was coming up for hearing on 07.06.07. In order to determine the issue, it seems necessary to revisit the prayers in the chamber summons dated 12.10.06 and notice of motion dated 17.10.06.

The respondent's chamber summons dated 12.10.06 had 9 prayers as under:-

1. THAT the court be pleased to dispense with service herein in the first instance.
2. THAT the Honourable Court be pleased to restrain the Respondent (Manjit Singh Amrit), his servants and/or agents from interfering with the life of the Applicant (Papinder Kaur Atwal) and the child at school, work or socially with their peaceful and quiet enjoyment of the matrimonial home at Riverside Drive – Nairobi.
3. THAT the Honourable Court be pleased to grant the Applicant full care, custody and control of the issue of marriage the subject matter of this suit pending the hearing and determination of this suit. The child is namely Akash Singh Amrit born on 18th June, 1996.
4. THAT the Honourable Court be pleased to order the Petitioner/Respondent herein to pay alimony *pendente elite* to the Applicant pending the hearing and determination of this cause.
5. THAT this Honourable Court be pleased to order the Respondent herein to maintain and/or continue maintaining the issue of the marriage the subject of this suit pending the hearing and determination of this suit.
6. THAT this Honourable Court be pleased to order the Respondent to pay and/or continue paying school fees and all school related expenses for the issue of the marriage pending full determination of this suit.
7. THAT the Respondent be ordered to pay and/or continue paying the medical bills for the issue of the marriage pending full determination of this suit.
8. THAT the Petitioner/Respondent herein be ordered to pay medical bills of the Respondent/Applicant herein pending full determination of this cause.
9. THAT this Honourable Court be pleased to condemn the Petitioner/Respondent herein to pay the cost of this application.

On 13.10.06 I granted prayer 1 and heard the chamber summons *ex-parte* in the first instance. I also granted prayers 2 and 4 and issued interim orders also *ex-parte* in terms of the said prayers.

Arising from the above *ex-parte* orders, the petitioner filed his notice of motion dated 17.10.06 which had the following prayers:-

1. THAT for reasons to be recorded this application to discharge and/or set aside the *ex-parte* orders granted by this Honourable Court on the 13th of October 2006 be heard *ex-parte* before the hearing of Respondent's application dated 12th of October 2006 inter-parties.
2. THAT in the alternative and for reasons to be recorded the *ex-parte* orders granted by this Honourable Court on the 13th of October 2006 be stayed *ex-parte* pending the hearing of Respondent's application dated 12th of October 2006 inter-parties.

3. THAT the *ex-parte* temporary injunction granted by this Honourable Court on the 13th October 2006 be discharged.
4. THAT the Petitioner/Applicant be at liberty to apply to the Honourable Court for any such further directions and orders for purposes of meeting the ends of justice.
5. THAT the costs of this application be provided for.

I declined to hear the petitioner's notice of motion dated 17.10.06 *ex-parte* but directed that it be served on the respondent for hearing *inter-partes*. At the *inter-partes* hearing on 09.11.06, respondent's counsel urged that the respondent's chamber summons, being earlier in time of filing, be heard first and that the petitioner could respond thereto by way of his notice of motion. I refused the respondent's request and directed that the notice of motion, which touched on the question of jurisdiction of the court to issue the *ex-parte* orders in question, be heard first and a Ruling made thereon before anything else happened. The notice of motion was heard *inter-partes* whereafter I made the Ruling delivered on 20.11.06. In that Ruling I discharged the *ex-parte* orders made on 13.10.06 and replaced them with the following orders, made after the *inter-partes* hearing:-

1. That petitioner/applicant shall pay to the respondent a monthly maintenance allowance of Kshs.58,400/= pending substantive hearing and determination of the chamber summons dated 12.10.06 and the notice of motion dated 17.10.06 as the response thereto.
2. That motor vehicle Reg.No. KAJ 300G, Make BMW be at the disposal of the respondent for her use and that the respondent (sic-should be petitioner) provides for its reasonable fuelling and maintenance expenses pending substantive hearing and determination of the above chamber summons and notice of motion .
3. That the respondent be at liberty to stay at 'the residence' at Riverside Drive pending substantive hearing and determination of the above chamber summons and notice of motion.
4. That costs shall be in the cause.

I have had a chance to revisit the Ruling made on 20.11.06 and the proceedings on which it was based. To the extent that the central concern of the petitioner's notice of motion dated 17.10.06 was the setting aside of the *ex-parte* orders issued on 13.10.06 and that the said orders were discharged, I think the submission by respondent's counsel and accepted by petitioner's counsel that the said notice of motion was determined by the Ruling delivered on 20.11.06 is valid and I hold that the said notice of motion has been determined. Petitioner's counsel submitted, though, that even the respondent's chamber summons dated 12.10.06 was equally determined by the Ruling made on 20.11.06. That is not quite correct. The chamber summons had 9 prayers. Out of them, only prayers 1, 2 and 4 were granted *ex-parte* and interim orders in respect thereof issued *ex-parte*. The *ex-parte* orders were discharged after the petitioner's notice of motion was heard *inter-partes*. Prayer 4 in the respondent's chamber summons was granted in a modified form on interim basis after the *inter-parties* hearing. Three other orders were also made on interim basis after the *inter-partes* hearing. The bulk of the prayers in the respondent's chamber summons were not addressed.

The upshot is that I find:-

1. That the petitioner's notice of motion dated 17.10.06 was determined vide the court Ruling delivered on 20.11.06 as acknowledged by petitioner's counsel.
2. That the respondent's chamber summons dated 12.10.06 still remains to be heard.

Orders accordingly.

Delivered at Nairobi this 5th day of July, 2007.

B.P. KUBO

JUDGE