

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Appeal 31 of 2005

PETER KIMANI MUGIRI..... APPELLANT/RESPONDENT

VERSUS

JOANINA WAMBUI..... RESPONDENT/APPLICANT

RULING

By chamber summons dated 13.10.06 stated to be brought under section 5 (1) of the Judicature Act, Cap.8 and Order 52 of the Rules of the Supreme Court of England, the respondent/applicant applied for the following orders, namely:-

1. That this honourable court be pleased to order Peter Kimani Mugiri, the respondent herein be detained in prison for a term not exceeding six months for being in contempt of the orders of this honourable court entered on 26.07.05.
2. That the respondent be condemned to bear the costs of this application.

The grounds upon which the application is based are:-

- a) That despite the order of this honourable court dated 26.07.05 that pending the hearing of the appeal, the appellant to pay a sum of Kshs.12,000/= with effect from July, 2005 until the appeal is heard and determined, the appellant has disregarded/refused to comply.
- b) That this honourable court dismissed the orders for review of orders of 26.07.05 and stay of execution.
- c) That this honourable court further dismissed an application by the respondent for leave to file notice of appeal to the Court of Appeal against the orders of Hon. Lady Justice M. Koome given on 26.07.05 and 30.11.05.

The application is supported by the respondent's/applicant's affidavit sworn on 13.10.06. The gist of the respondent's/applicant's affidavit is that she obtained judgment in her favour in Thika Chief Magistrates Court Civil Case No.552 of 2002 against the appellant/respondent vide which the appellant/respondent was to pay her Kshs.23,000/= per month for maintenance; that the maintenance figure of Kshs.23,000/= was reduced to Kshs.12,000/= per month by the High Court (Koome, J) pending the hearing and determination of an appeal the appellant/respondent had filed against the Thika Court judgment; and that on 30.11.05 the High Court (Koome, J) dismissed the appellant's/respondent's application for review, setting aside and/or varying of the orders made on 26.07.05 for him to pay Kshs.12,000/= per month pending his appeal against those orders. The respondent's/applicant's affidavit adds that on 02.06.06 the High Court (Dulu, J) dismissed the appellant's/respondent's application for leave to file notice of appeal to the Court of Appeal against the orders of 26.07.05 by Koome, J for him to pay Kshs.12,000/= per month pending hearing and determination of his appeal. The respondent/applicant also deponed that the appellant/respondent has the requisite means.

On 28.06.07 the parties appeared before this court whereat the appellant/respondent acknowledged that

he had not paid the Kshs.12,000/= per month to the respondent/applicant as previously ordered by Koome, J on 26.07.05. His explanation was that the figure of Kshs.12,000/= per month is beyond his means, which is why he had applied for the setting aside, review or variation of the order for its payment but that his application was dismissed on 30.11.05. Thereafter the appellant/respondent filed chamber summons dated 09.01.05 but amended to read 09.01.06 in the High Court seeking leave to file notice of appeal to the Court of Appeal against the orders of 26.07.05 and 30.11.05 for him to pay Kshs.12,000/= per month. That application went before Dulu, J who in a ruling dated 02.06.06 found it incompetent and dismissed it with costs.

The court record shows that in an affidavit of means sworn on 20.02.07 the appellant/respondent offered to pay Kshs.3,000/= per month out of monthly earnings of Kshs.8,000/= for the maintenance of the respondent/applicant and the children the two of them seem to have got together, which is higher than the Kshs.2,000/=the appellant/respondent had previously offered. The respondent/applicant insists on the Kshs.12,000/= per month ordered earlier.

The position now is that the order made by Koome, J on 26.07.05 for the appellant/respondent, Peter Kimani Mugiri to pay Kshs.12,000/= per month to the respondent/applicant, Joanina Wambui still stands and unless that amount, which has been accumulating since the order was made, is paid, the appellant's/respondent's appeal against it cannot be heard and the appellant/respondent also risks being committed to civil jail for disobeying the court order of 26.07.05 for him to pay the said amount from July, 2005. The court hereby reiterates that the appellant/respondent, Peter Kimani Mugiri pays to the respondent/applicant, Joanina Wambui the Kshs.12,000/= per month previously ordered from July, 2005 by 30.11.07, failing which the respondent/applicant be at liberty to apply for his committal to civil jail. The appellant/respondent shall bear the respondent's/applicant's costs of this application.

Orders accordingly.

Delivered at Nairobi this 25th day of September, 2007.

B.P. KUBO

JUDGE