



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Divorce Cause 131 of 2000

R M PETITIONER

VERSUS

J N M RESPONDENT

RULING

The Petitioner/Applicant herein has filed the petition for divorce on 25th July, 2000.

The said petition which is opposed by the Respondent has not been heard as of to-date.

The Petitioner in the meantime has filed an application by way of Notice of Motion dated 28th January, 2005. The application is provided under Rules 38, 40 and 60 of Matrimonial Causes Rules and Section 3 and 25 of the Matrimonial Causes Act (Cap 152 Laws of Kenya).

She seeks four prayers. One whereof is an alternative prayer namely:

- 1. That a Maintenance Order be made directing the Respondent to pay such monthly sum as the Honourable Court may find just and reasonable for food, clothing, housing, medical care, support and the general upkeep and maintenance of the Petitioner.**
- 2. That the Respondent be ordered to vacate the matrimonial house being Land Reference Number [particulars withheld], Jacaranda Avenue Nairobi and grant the Applicant/Petitioner the exclusive right to occupy and reside therein.**
- 3. That the Applicant/Petitioner be granted the right to occupy and reside in the house situate in Land Reference No [particulars withheld], Golf Course Estate and the Respondent be ordered to furnish the house and to install all the necessary facilities and conveniences thereof.**
- 4. That the Applicant/Petitioner be granted the exclusive right to use Motor-vehicle Registration Number [particulars withheld] Toyota Saloon.**

The said application is also supported by her supporting affidavit sworn on 28th January, 2005 and supplementary affidavit sworn on 20th February, 2006. In paragraph 26 of the latter affidavit she has specified her monthly needs which totals to KShs.445,000. In those items specified she seeks Shs.70,000 for clothing, Shs.35,000 for medical care, Shs.50,000 for household utensils and appliance, and

Shs.50,000 for Insurance. She also enclosed a letter dated 23rd September, 2005 from Dr. J. G. Njenga. (Ann. RNB) and relied on its contents to show that she has no mental problems.

She also filed a further affidavit sworn on 7th March, 2006.

The Respondent husband is opposing the application and has based his case on his replying affidavit sworn on 8th March, 2005 and an affidavit in reply to petitioner's supplementary affidavit sworn on 22nd March, 2006.

The main reasons for the Petitioner (wife) to seek maintenance is that the Respondent is not looking after her needs and general upkeep as well as that she is threatened by the Respondent to withdraw the user of motor vehicle as well as forceful medical treatment from Dr. Gatere.

The respondent has specified how he looks after the needs of the Petitioner and how due to her mental status, it is against her own interest to stay on her own. He enclosed four medical reports from Dr. P.A. Kigomwa, Dr. N.N.O. Okony, Dr. A. D. Agostin and Dr. S.C. Gatere. They all have stated that the Petitioner is suffering from Paranoid Schizophrenia with bouts of depression and excessive suspicion and has a well disguised but severe paranoid process operating in which her husband is the focus. These reports date from 1997 to 2006. The last one from Dr. Gatere is of 21st March, 2006 and who is treating her presently. According to him also the Petitioner does not have insight into her psychiatric disorder and due to her deep paranoid mentation, she continues to deny her illness and obstructs necessary treatment which she needs. Lastly he opined that she does not have the capacity to stay alone and look after herself without maintenance injections for more than six months 'if that'.

As against these four reports the Petitioner has attached a medical opinion of Dr. Njenga which states and I quote:

“She has however asked me to confirm that since 17th March, 2005 I have seen her on a regular weekly basis and that it is my current opinion that she is not suffering from any active psychosis and that she is for the time being, (emphasis mine) able to look after herself and her affairs.”

Apart from the fact that the language of the report is not absolutely clear that whether after being asked by her, that is what his opinion is, I am hesitant to accept this report also because he has stated that she continues to receive regular injection from a colleague and that it was possible that they contribute positively to her health and well being.

Dr. Njenga has also given this report without taking to his colleague or husband once again at the request of the Petitioner/Applicant.

I must also emphasize here that although the court wanted to question the doctors involved, both the counsel agreed to rely on those reports without calling any of the aforesaid doctors. Thus it was for me to decide solely from the reports whether it is in interest of the Petitioner to be allowed to stay on her own.

It is very difficult only from the reports, to make any conclusive findings on the mental status of the Petitioner, but on the balance of probability, I could say that there are circumstances which show that the Petitioner could be suffering from paranoid schizophrenia and in her delusion, she may neglect to look after herself which could deteriorate her health.

I also do not have any strong evidence to show that she has been mistreated by the respondent so as to cause threat to her physical well being.

The Respondent has also openly disclosed his income with details which except for simple denial have not been controverted by her. Her demand of Shs.445,000 per month is, without any doubt, excessive and beyond reach of the Respondent. Not only that, the demands made are also somehow unreasonable and unrealistic.

In the premises, without making any conclusive finding, I dismiss the application by the Petitioner, obviously with order that the respondent would pay her costs.

I can only urge and hope that the respondent takes extra care for her upkeep and well being so that the Petitioner would not have any reason to make any further complaint.

Dated and signed at Nairobi this 4th day of May, 2006.

K.H. RAWAL

JUDGE

4.5.2006