



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**Divorce Cause 5 of 2004**

**P M K .....PETITIONER**

**Versus**

**T N K .....RESPONDENT**

**RULING**

The Petitioner filed the petition in this matter on 22nd January, 2004 seeking for the dissolution of the marriage that was solemnized on 26th February, 1996 at the Office of the Registrar of Marriage, Mombasa.

The respondent who is the applicant in this application filed an answer and Cross- Petition on 10th August, 2004. In addition the respondent/applicant filed the Chamber Summons that was brought under the matrimonial causes rules and sought for orders that;

- i) That the petitioner be ordered to pay alimony pending suit.
- ii) That the petitioner be ordered to pay to the respondent such periodical payments in respect of the children's maintenance.

This application which was filed under a certificate of urgency was duly served upon the petitioners advocates on 7th April, 2005. The petitioner has not filed any replying affidavit or affidavit of means and the Counsel who appears in court for the petitioner withdrew from participating in these proceedings when he lost his bid to adjourn the matter.

According to the applicant, there are two issues of the marriage namely:

- i) D K M born 22nd May, 1997
- ii) J J G M born 6th February 2001

Both of whom are under the care and control of the applicant.

Both children are girls and are attending school at [particulars withheld] and School fees per term, transport and lunch for each child is about Kshs.40,000/= per term. In addition to school fees the applicant pays house rent at the rate of Kshs.40,000/=, per month electricity, food and or other related expenses for the children. The applicant earns a total of Kshs.56,163/= per month from her employer, the Nairobi University and while working on part-time basis from Gertrudes Hospital she earns an additional sum of approximately Kshs.50,000/= per month. On the other hand the petitioner, who is a consultant surgeon running his own private practice and in employment by the government earns approximately

Kshs.300,000/= per month from his practice and Kshs.80.000/= from the Government. Thus the respondent earns a monthly income of Kshs.380,000/= per month.

As indicated above, the respondent did not file any response to this application. The applicant is also a medical doctor and in the absence of a reply, that controverts what she has indicated as the respondent's earnings, this court has no choice but to be guided by what is provided for by the applicant as the respondents earning.

The Matrimonial Causes Act especially Section 25 and 26 gives this court power to make orders for alimony pending suit and alimony and maintenance for the wife and children. Besides the order of alimony, the parents of the children have a duty to share the responsibility of securing their well being, their education and other needs. In assessing the amount payable in this respect I have taken the following factors into consideration:

- a) The School fees, transport, lunch amount to Kshs.40,000/= per term for each child.
- b) The applicant pays Kshs.40,000/= for house rent
- c) The applicant spends another sum of about Kshs.38,000 per month towards food, recreation, transport, utility books and other miscellaneous expenses.

I have also taken into consideration the fact that the respondent should contribute to the welfare of the children and since the separation the wife has been destabilized financially and the overriding goal in accessing the amount payable is the principal that parties lifestyle prior to the separation should be maintained in as much as possible to the same standards of life even as in separation.

In this regard, I have considered that the children's school fees per month would be about Kshs.20,000/=, house rent Kshs.40,000/= per month and other expenses Kshs.38,000/= which should be shared equally between the parties giving an average of Kshs.49,000/= per month to be paid by each party.

Accordingly, I hereby order that the respondent should pay a combined sum of Kshs.49,000/= out of which Kshs.20,000/= is the wife's alimony and Kshs.29,000/= is towards the education and welfare of the children.

The said sum shall be payable with effect from 1st June, 2005 with further orders. It is so ordered.

**MARTHA KOOME**

**JUDGE**