



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**SUCCESSION CAUSE NO. 163 OF 1999**

**SATPAL KAUR RIHAL.....PETITIONER**

**VERSUS**

**SURINDER SINGH RIHAL.....RESPONDENT**

**RULING**

By a judgement of this court which was delivered on 22nd day of August, 2003 by Hon. Aluoch J. the marriage between the petitioner and the respondent was dissolved and the respondent was ordered to pay a sum of kshs. 10,000/= per month towards the maintenance of the two children of the marriage.

The application before me is brought under rule 59 of the Matrimonial Causes Rules. The petitioner seeks for orders;-

1) That the respondent be ordered to pay a sum of Kshs, 90,000/= being the arrears of the maintenance for the two children of the marriage with effect from November, 2003 to July 2004 and further payments at the rate of kshs. 10,000/= per month in terms of the decree nisi issued herein. Secondly, the petitioner seeks for an order that in default of the payment within 14 days or such other time as this court may specify the respondent should be committed to civil jail.

The application is premised on the grounds that, the petitioner earns a very nominal income and she is unable to meet the expenses of the children. Moreover, the respondent has failed to comply with the order to pay the maintenance for the children. The petitioner has also sworn an affidavit in support of her application and has given a detailed account and justification why this application should be granted.

The respondent was duly served with the order of decree nisi through his advocates as per the affidavit of service. The respondent only remitted three cheques for September, October and December 2003 in respect of the maintenance. Despite repeated reminders, the respondent has failed to pay further sums. Counsel for the petitioner therefore submitted that this court should not accord any hearing to the respondent who is in contempt of court.

On the other hand, the respondent filed a replying affidavit whereby he has given reasons for his failure to honour the order by the court. The respondent claims that he has been jobless and relied in his uncle Amrik Singh Rihal who provided him with housing and personal upkeep through his company Gurbaksons (K) Ltd.

I have given his replying affidavit due consideration as well as all the material that was placed before me. The provision of rule 59 (1) are very clear as follows:-

“ 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 non-payment) and the judge may make such order as to attachment of the person or the property of the person so failing to pay as in the circumstances may seem expedient''

Hence, according to the above provisions, all I need to ensure is that the respondent has defaulted in payment of the maintenance and that he was served with the order. The above is not denied by the respondent. I therefore find his excuses for not paying maintenance preposterous as the order that required him to pay is still in force, his financial circumstances notwithstanding. The respondent has a duty to pay the sum as ordered for the maintenance of his children vide the provisions of rule 58 of the M.C. Rules, this court is also empowered to order the attachment or committal of the respondent to civil jail.

It is obvious that the respondent has failed to pay the sum for the support of his children and I am satisfied that he is in contempt of court. However since I would like to exhaust all civil remedies available in order to enforce and collect the outstanding arrears, I am inclined to allow the respondent to pay all the outstanding sum of maintenance amounting to Kshs. 120,000/= up to December, 2004 within 14 days from the date of this ruling in default, let there be an attachment of the respondent by way of his arrest and committal to civil jail for a period of six (6) months.

The petitioner shall have the costs of this application.

It is so ordered.

**Ruling read and signed on 21st January, 2005**

**MARTHA KOOME**

**JUDGE**