



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**DIVORCE CAUSE NO. 95 OF 2004**

**G M K.....PETITIONER**

**Versus**

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

**RULING**

T K T, the respondent in the Divorce Cause, filed this application dated 9th December 2004. Being dissatisfied with the ruling delivered by this court on 26th November 2004, he filed a Notice of Appeal on 6th December 2004. The applicant has also annexed a draft copy of the Memorandum of Appeal and according to his Counsel the appeal has very high chances of success.

If execution proceeds, Counsel for the applicant argued that the Appeal shall be rendered nugatory.

Secondly if there is no stay of execution the children of the marriage shall be affected. In any event since the applicant meets the education expenses for the children, here where there should be shared responsibility and the applicant will be able to show that he cannot pay maintenance to the petitioner she is meeting the entire costs for the education and insurance for children of the marriage and thereby absorbing the petitioner.

This application was opposed by the petitioner. Counsel for the petitioner argued that the applicant failed to satisfy the conditions set out under order 41 rule 4 of the Civil Procedure Rules. He has not demonstrated that he will suffer substantial loss. Moreover the applicant sold a matrimonial property on 10th September 2004, for Kshs.6,800,000/=. This property is subject of H.C.C.C. No. 27 of 2004 (O.S.). The order for maintenance was made in November 2004 and the applicant has not made a single installment payment towards the sum ordered.

The applicant has also attached documents to show that he is purchasing a new car for Kshs.604,800/=. This is not a person who is struggling according to the petitioner but a person who is wallowing in money but refusing to honour the court order. I have considered the material presented to me, and the reasons advanced by the parties for and against the orders sought. This application is brought under order XLI rule 4 of the Civil Procedure rules. This is a matter between a husband and wife. The sum of Kshs.20,000/= that I ordered to be paid to the wife was pursuant to the provisions of Section 25 and 26 of the matrimonial Causes Act and it is in respect of the wife's maintenance.

I still hold the same views that the separation has destabilized the wife such that the husband should contribute to her maintenance so that the same or similar standard of life that the wife enjoyed is maintained.

The issues raised in the draft memorandum of Appeal cannot be considered as I cannot sit in my own appeal. Those issues should be addressed in the Court of Appeal. I am not satisfied that the applicant has fulfilled the conditions and the standards provided for under Order 41 rule 4 of the Civil Procedure Rule.

I am also satisfied that he will suffer substantial loss if he paid the wife the sum ordered. Accordingly I dismiss the application for stay of execution with costs to the petitioner.

It is so ordered.

Ruling read and signed on 6th May 2005.

**MARTHA KOOME**

**JUDGE**