



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

**DIVORCE CAUSE NO. 55 OF 2000**

**B K B.....PETITIONER**

**Versus**

**K B B.....RESPONDENT**

**RULING**

The respondent in this cause has sought for an order suspending the periodical payment of Kshs.20,000/= per term towards the education expenses for the children of the marriage being

DKB,

RKB and

KKB

In the alternative the respondent sought for an order modifying the sum of Kshs.20,000/= be reduced.

This application is premised on the grounds that the respondent, the father of the children is facing tremendous financial difficulties and he is unable to keep up with these periodical payments. Secondly primary education is presently free and the children should utilize the facility.

The application is also supported by the respondent's affidavit. According to the respondent, at first he did not understand that he was supposed to pay Kshs.20,000/= per term but he thought it was a one off payment but when he learnt he was to pay every term he made this application to vary the order. He attached his bank statements for his business known as Bakarania Builders for December 2003, which reflects the following balance of Kshs.27,405, January 2004 Kshs.16,129, February 2003 43,082 and March 2004 Kshs.15,468 for April 2004.

He also enclosed various bills owing to a Security Company, Telephone bills and income tax invoice.

According to the respondent, he cannot afford to pay the sum ordered and unless the sum is varied he is likely to be committed to civil jail which will not help the petitioner.

Furthermore the petitioner can mitigate for the loss by sending the children to free primary schools.

This application was opposed by the petitioner who filed a detailed response in the replying affidavit sworn on 11th August 2004. The first child D K B has joined secondary school and the term fees is Kshs.36,000/=. The school fees for the other younger children has been increased to Kshs.16,000/= and therefore their term fees is Kshs.66,000/= which should be shared between the two parents who have responsibility of securing the welfare of the children.

Moreover the respondent resides in a family owned house at Second Avenue Parklands in Nairobi. According to the Hindu tradition this is a joint Hindu Family Property where he lives with his other family who share all the utility bills.

Besides the business called Bakrania Builders the respondent owns another business of pastry and cakes. In any event the bank statements relied upon by the respondent show very high turnover and amounts of money that have been withdrawn from the account which is not reflective of a person struggling as the respondent would wish to portray himself. The respondent can even afford to pay tax installments.

I have given due consideration to this interlocutory application regarding the interim order for school fees of the children. I have taken into account that in a matter like this the welfare of the children is of paramount consideration and that parental responsibility is a duty that is vested upon both parents.

The respondent argument that he cannot afford to raise Kshs.20,000/= or Kshs.5,000/= per month towards his contribution for school fee for three children one of whom is in secondary school is in my view a fallacy. His monthly balances as per the bank statements produced show a balance of not less than Kshs.10,000/= per month. Certainly if the school fees were the respondent's priority he would have been able to pay from the balances of his monthly income as reflected in the bank statements. The petitioner has been paying her portion of school fees, these children have other needs besides school fees such as uniforms, books, they need food and perhaps medical care, even if the two younger children were in public schools these basic needs must be provided for.

It is not the intention of this court to let parents get away with parental responsibility by pretending to have no money, at the expense of children dropping out of school. Every parent must strive to support his children and the payment of Kshs.5,000/= by the respondent towards school fees for three school going children is not an onerous burden. It is only the respondent who do not give the payment of school fees a priority like he has given other pending bills.

In the premises I disallow the application and order the respondent to continue paying Kshs.20,000/= per term until further orders.

The said payment should be made directly to the school henceforth.

It is so ordered.

**Ruling read and signed on 3rd day of May 2005.**

**MARTHA KOOME**

**JUDGE**