

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY DIVISION

JUDICIAL SEPARATION CAUSE 143 OF 1993

E.W.N.....PETITIONER

VERSUS

J.F.N.....RESPONDENT

AND

L.W W/O S.K.K.....CO-RESPONDENT

RULING

The Applicant, who is also the Petitioner in this old Separation Cause filed an application by way of Chamber Summons dated 2nd November 2004. She has sought for two principal prayers which can be summarized as follows:-

1. That this Honourable Court be pleased and obliged to give out and to issue a declaration order to affirm, aver and assert that its interim orders of 22/12/93; 28/12/93; 4/1/94 and 17/3/94 issued in favour of the Petitioner are still valid, binding and operative to date.

2. This Court to direct the OCS Kiambu Police Station to ensure law and order is maintained at the Petitioner's matrimonial premises at Ndumberi, Kiambu and to compel the Respondent to vacate those premises with immediate effect.

This application is supported by very detailed affidavits of the Petitioner which have to a larger extent quoted the biblical adages and excerpts from the Bible. This application was opposed by the Respondent, in addition the Co-Respondent one Lucy Wangui filed an application by way of Chamber Summons dated 8/3/05 and sought for her name being the Co-Respondent to be struck out from this application herein. Counsel for the Respondent submitted that the orders sought by the Applicant cannot be granted. There is no provision of the law that requires the affirmation of the orders. These orders are clear and unambiguous. The parties have been separated since 1993. Secondly, the application was attacked being defective, it is brought under the various statutes of the law that do not give this Court jurisdiction to deal with certain matters under the orders cited such as trespass Act, the Civil Procedure Act and the Registered Lands Act to name just a few of them. Thus counsel for the Respondent requested this Court to dismiss the application.

Counsel for the Co-Respondent submitted that the name of the Co-Respondent was irregularly included in the current application. The Co-Respondent is not named in the Petition and there was no application filed pursuant to the matrimonial causes rules to add the name of the Co-Respondent.

I have given due consideration to this application as well as all the material that was placed before me either in support or in opposition of the application. I have also gone through this old file whereby the petition was filed way back in 1993 and the same has not been determined. However, it is clear there are interim orders that were issued and they have not been set aside.

In the premises, I see no logic in affirming the orders as there is no such provision under the Matrimonial Causes Act for the Court to affirm its own orders. Similarly, matters of Judicial Separation are governed by the provisions of the Matrimonial Causes Act, and there is no provision for the involvement of the police in execution of the orders.

I have gone through the records in this file and it is clear that the orders cited by the Respondent were made at various times I must however state that I am concerned that the main cause has never been determined. There is the issue of matrimonial properties that is also an issue that has not been determined. Parties seem to have become comfortable with interim orders on interlocutory application while the main cause has remained undetermined.

Although I have not come across an application for determination of the Matrimonial properties except for the restraining orders, I am of the view that those are the matters that should be determined and not the current application that seeks affirmation of the orders already issued. Based on the above reasoning therefore I come to the inescapable conclusion that the application dated 2/11/04 is bad in law, it is unnecessary and also unfounded. I therefore dismiss it and the costs shall be in the cause.

As regards the joinder of Wanjiru Kimani as a Co-Respondent in this application, I am satisfied that no leave was sought and granted pursuant to the Matrimonial Causes Act to include her in this Petition as a Co-Respondent. Her name is not cited in the petition for Judicial Separation and I therefore allow her application and order that her name be struck off the application dated 2nd November 2004 with costs to the Co- Respondent.

It is so ordered.

Ruling and signed on 28/10/05.

MARTHA KOOME

JUDGE