



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

div cause 8 of 00

JOHN MICHAEL MIDWA PETITIONER

VERSUS

OLIVIA AKINYI MIDWA RESPONDENT

PROCEEDINGS

2nd February 2000. Memorandum of Appearance entered on behalf of the Respondent by M/S Aming'a Apiyo, Masese & Co Advocates, Nairobi.

SIGNED DEPUTY REGISTRAR

9th February 2000 Answer to Petition and cross-petition filed by M/S Aming'a Opiyo, Masese & Co Advocates for the Respondent.

SIGNED

DEPUTY REGISTRAR 29.3.2000

CORAM: Patel J.

Turus Court Clerk.

Opiyo for Applicant.

Masese for Respondent.

COURT: By consent both applications be heard on 6.4.2000 before any other judge.

V.V. PATEL

JUDGE

6.4.2000 Rawal C.A Mr. Moloollo for the Petitioner

Mr. Mwangi holding brief for Mr. Opiyo for the Applicant. Mr. Kanyeri Court Clerk. COURT: The Petitioner to file and serve the further affidavit on or before 10th April 2000. The applications (both) be mentioned on 10th April 2000 before Honourable Duty Judge.

K.H. RAWAL (Mrs)

COMMISSIONER OF ASSIZE

6.4.2000 10.4.2000

Opiyo for Applicant.

No appearance for Respondent. COURT: Upon request hearing fixed for 18.4.2000. V.V. PATEL JUDGE 18.4.2000 Rawal C.A Mr. Opiyo for the Applicant. Mr. Moloollo for the Petitioner/Respondent. Mr. Kaburu. COURT: By consent both the applications be heard on 27th April 2000. K.H. RAWAL (Mrs) COMMISSIONER OF ASSIZE 27.4.2000 CORAM: Khamoni J Kabiru Court Clerk. Mr. Opiyo and Mr. Orenge for the Respondent. Mr. Mr. Oloo for the Petitioner. COURT: Two applications to be heard. One is Chamber Summons dated 28.3.2000 and the second one dated 29.3.2000, both adjourned for hearing on 3.5.2000 before any judge. www.kenyalawreports.or.ke 4 KHAMONI JUDGE 3.5.2000 Rawal C.A Mr. Opiyo for the Respondent Mr. Makollo for the Petitioner. Mr. Makori Court Clerk. MR. OPIYO: Applications dated 28th March 2000 and 29th March 2000 - affidavit of the Respondent sworn on 28th March 2000 - reply thereof affidavit of 6th April 2000. Replying affidavit sworn on 5th April 2000, Further affidavit sworn on 10th April 2000. Grounds of oppositions and those of support in the application. Prayer No. 2 of the application dated 29th March 2000 not be bound to cohabit - not contested. Issues on hand custody of the children of the marriage and occupation of matrimonial home. The husband is ready to maintain the Petitioner. The children are minors 10 and 7 years of age. School going age. They need day to day care of the mother. They need to stay in the familiar place of matrimonial home - Plainsview, off Mombasa Road, emotionally and psychologically better catered for by their mother. Mother is contributor to www.kenyalawreports.or.ke 5 the matrimonial home, Petitioner is as a guarantor. It is fair that she should continue to stay in the matrimonial home with the children. Separation order is not contested. Animosity between the two would be cared for. Major ground is sickness - disclosed is not communicable disease - children will not be endangered. HIV positive - that cannot be a ground for denying a mother. K.H. RAWAL (Mrs) COMMISSIONER OF ASSIZE Mr. Mokollo: Rely on the pleadings filed by the Petitioner. The children need the support as they are minors but they must not necessarily be left under the care of their mother. Prince concern is the best welfare of the children. The Petitioner is best suited to provide for the welfare. The custody of the children is also to be determined on the conduct of the parties. The Respondent's conduct does not support her claim. She is intemperate and violent. Royden's Law - page 891. We rely on the nature of the disease and also on the conduct of the Respondent. Mary Thogori Mutheu Vs. Paul Kamau Mutheu and Taylor Shariff Shamalla Vs. Jared Shamalla. The court takes into account the conduct and excludes the party who is violent from the matrimonial home. Petitioner has undertaken to provide for reasonable maintenance and accommodation.

Petitioner.

K.H. RAWAL (Mrs)

COMMISSIONER OF ASSIZE

MR. OPIYO: Conduct - Petition filed 24th January 2000.

K.H. RAWAL (Mrs)

COMMISSIONER OF ASSIZE

COURT: I suggest a mention on 10th May 2000 at 2 p.m with the parties.

K.H. RAWAL (Mrs)

COMMISSIONER OF ASSIZE

3.5.2000

RAWAL C.A

Coram as on 3rd May 2000 and parties in person.

COURT: Further mention on 12th May 2000 at 10.30 a.m.

K.H. RAWAL (Mrs)

COMMISSIONER OF ASSIZE

10.5.2000

RAWAL C.A

Mr. Opiyo for the Applicant.

Mr. Makoloo for the Respondent

Mr. and Mrs. Midwa.

Mr. Makori Court Clerk.

MR. MIDWA: The tenant in the out house has agreed to vacate by 17th May
2000.

K.H. RAWAL (Mrs)

COMMISSIONER OF ASSIZE

12.5.2000

COURT: Ruling on 6th June 2000.

K.H. RAWAL (Mrs)

COMMISSIONER OF ASSIZE

12.5.2000