



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**BAN v BWN (Divorce Cause 89 of 2012)
[2024] KEHC 7977 (KLR) (Family) (14 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7977 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
DIVORCE CAUSE 89 OF 2012
PM NYAUNDI, J
JUNE 14, 2024**

BETWEEN

BAN PETITIONER

AND

BWN RESPONDENT

RULING

1. Before this court for determination is a Notice of Motion dated 5th September 2023 brought at the instance of BAN seeking the following orders: -
 1. Spent.
 2. Spent.
 3. That the Honourable Court be pleased to declare that the maintenance order in favour of the Respondent lapsed on or before August 2022 and/or the same is hereby revoked.
 4. That costs of this application be provided for.
2. The Application was premised upon Section 78 and 80 of the *Marriage Act*, and all other enabling provisions of the Law, and was supported by the Affidavit of even date sworn by the Petitioner.
3. The Respondent opposed the application vide a Replying Affidavit sworn on 14th November 2023.

Background

4. The Petitioner and the Respondent got married on 18th July 1998 and their marriage was blessed with two issues. Due to irreconcilable differences, the Petitioner filed Divorce Cause No. 89 of 2012 before



this court. The matter was heard and determined by Justice W. Musyoka who delivered a judgment on 6th March 2015 in the following terms;

1. That I hereby order dissolution of marriage celebrated between the Petitioner and the Respondent on 18th July 1998;
2. That the decree nisi shall issue forthwith, to be made absolute after thirty (30) days;
3. That the petitioner shall continue to provide the respondent with monthly maintenance at the rate of Kshs. 100,000 but there shall be liberty to apply;
4. That there will be no orders as to costs.
5. The respondent then filed a notice of motion dated 30th January 2023 seeking an order to compel the petitioner to pay in full, all compounded maintenance/alimony arrears from February 2022 to date in compliance with the judgment of the court of 6th March 2015. The court dismissed the Respondent's claim that the applicant owed her arrears.
6. The Applicant in his submissions asked the court to revoke the maintenance order since the Respondent was able to support herself, that the issues of the marriage were adults now and he supports them, also that the status of the applicant had changed because he remarried and has a family of his own who rely on him. The court did not allow this prayer because no application had been placed before court for determination. This prompted the applicant to file the current application.

Petitioner's Submissions.

7. In his written submissions, the Petitioner summarises the facts set out in his affidavit with regard to their family history and background, their career and professional lives, acquisition of property and their respective lifestyles.
8. The Petitioner relied on Section 78(c) of the *Marriage Act* which provides that;

“except where an order for maintenance of a spouse is expressed to be for any shorter period or where such order has revoked and subject to section 79, the order shall lapse where the person being maintained is subsequently able to support himself or herself.
9. The Petitioner also relied on Section 80 (1) of the *Marriage Act* which provides that;

“the court may revoke or vary a subsisting order for maintenance of any kind, whether secured or unsecured, if it is satisfied that the order was obtained as the result of misrepresentation or mistake of fact or that there has been a material change of circumstances since was made.
10. He relies on the decision made in *W.M.M v B.M.L* [2012] eKLR where the court held that financial capacity of the spouses has to be examined before the court makes a finding as to whether a spouse should pay maintenance and if so how much.
11. He submitted that it has been 10 years since they divorced and he has diligently paid alimony. That it is time he gets freedom to carry on his life without supporting the Respondent. There have been changes in the Respondent's career and she is capable of supporting herself. The children of the marriage are now of majority age and his responsibility towards them has increased since he has to pay their college fees and individual housing. He urged the court to allow his application.



Respondent's Submissions

12. The Respondent submitted that the petitioner has not proved that circumstances have changed and that she is now able to support herself. She relied on Article 45 of the Constitution of Kenya and Section 77 (d) of the Marriage Act which stipulate the rights of parties in a marriage and after divorce.
13. She relied on the decision in *Avery v Avery* 209 N.J Super 61-62 (App. Div. 1986) where the court was faced with the question of whether a former wife's increased earnings subsequent to divorce constitute changed circumstances entitling the former husband to terminate alimony irrespective of the wife's needs for support of herself and children born of the marriage. She also relied on the decision in *Glass v Glass*.
14. She submitted that although the Petitioner has another family, he is a man of means and he is able to support both families equally. She urged the court to dismiss the Petitioner's with costs.

Analysis And Determination.

15. I have looked at the application, the affidavit in support and against the applications and the submissions of all the parties. The issue for determination is whether the Petitioner's application has merit.
16. The law does provide for grant of orders for alimony payable by the ex-husband to his former wife. The foundation for the relief is historical. It arose out of the genuine need to guard against former wives being rendered destitute upon divorce, as historically women tended not to have the same opportunity as men to grow economically and were deemed to be dependent on a male for support. Divorced women were deemed to be particularly vulnerable and therefore the law intervened to protect them in that respect.
17. That was then, when wives were neither in business nor employment. Things have changed. Womenfolk, including wives, have joined the labour market and are running successful businesses. That, no doubt, has called to question the whole concept. Today, whereas the principle is still alive, it is applied only in deserving cases. For the support to be extended it must be demonstrated that there is need.
18. This is especially so in light of Article 45(3) of the Constitution of Kenya, 2010, which provides that parties to a marriage are entitled to equal rights at the time of the marriage during marriage and at the dissolution thereof. That has been interpreted in number of cases, among them WMM vs. BML (2012) eKLR, where it was noted that each party was expected to provide for themselves upon divorce, save in cases where a spouse was genuinely destitute. None was to turn the other into a beast of burden.
19. The material placed before me indicates that the Respondent works at Safaricom as a Product Management Lead. At the time the divorce suit was heard and determined, the Respondent was earning just over Kshs 100000. With her career growth it is probable that he earnings have increased and she should be able to maintain herself.
20. The Petitioner on the other hand has moved on and has another family to support. The issues of the with the Respondent are all grown now. It is not disputed that he continues to provide for these children.
21. Having found that the Respondent is able to maintain herself, the Petitioner is absolved from paying any further alimony to the Respondent effective from 1st August 2022.
22. Each party to meet their own costs



SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 14TH DAY OF JUNE 2024.

P M NYAUNDI

JUDGE

In the presence of:

Fardosa Court Assistant

Advocates for the Applicant

Kibaara Advocate for the Respondent

