



**REPUBLIC OF KENYA**

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

**SEPARATION CAUSE NO.2 OF 2015**

IN THE MATTER OF THE AFRICAN CHRISTIAN MARRIAGE AND DIVORCE AC, CAP 151  
LAWS OF KENYA (REPEALED)

IN THE MATTER OF THE MARRIAGE ACT, 2014

AND

IN THE MATTER OF A PETITION FOR JUDICIAL SEPARATION

BETWEEN

**H S O.....PETITIONER/APPLICANT**

AND

**W K M.....RESPONDENT**

**R U L I N G**

**Introduction**

1. These proceedings were commenced by way of a Petition dated 03/07/2015 through which the Petitioner/Applicant prays for the following orders/reliefs against the respondent:-

- a. **An order of the Honourable Court granting a decree of judicial separation from the marriage herein between the Petitioner and the Respondent.**
- b. **A permanent order of injunction against the Respondent herein or his agents restraining him from accessing, visiting, entering and or attempting to visit, access and or enter the Petitioner's house and or place of residence.**
- c. **The legal custody of the issues of the marriage herein.**
- d. **An order of joint maintenance of all the issues herein towards their food, education, healthcare and clothing.**
- e. **Costs of this Petition.**

2. The Petition is premised on grounds of cruelty and desertion as more specifically set out at paragraphs 7 and 8 of the Petition.

3. Together with the Petition the Petitioner/Applicant filed a Notice of Motion also dated 03/07/2015 praying for orders:-

1. **THAT this application be certified urgent and heard ex parte in the first instance.**

2. **THAT upon (1) above, the Honourable Court be pleased to issue temporary injunctive orders against the Respondent herein to refrain him from molesting, harassing, threatening, annoying, creating disturbances and or in whatsoever manner occasioning nuisances against the Petitioner herein and or from accessing, visiting, entering and or attempting to visit, access and or enter the Petitioner's house and or place of residence pending the inter partes hearing hereof.**
3. **THAT upon the inter partes hearing of this application and pending the hearing and or final determination of the Petition herein, the honourable court be pleased to issue interim injunctive orders against the Respondent herein to refrain him from molesting, harassing, threatening, annoying, creating disturbances and or in whatsoever manner occasioning nuisances against the Petitioner herein and or accessing, visiting, entering and or attempting to visit, access and or enter the Petitioner's house and or place of residence.**
4. **THAT the costs of this application be provided for.**

4. The grounds in support of the application are set out on the face thereof and are also contained in the Petitioner's/Applicant's supporting affidavit dated 03/07/2015. Principally, the applicant says that her marriage with the respondent has irretrievably broken down and that the Respondent has since banished, chased away and prevented the Petitioner/Applicant from the couple's matrimonial home and house and that she has nowhere to go. She avers that the orders sought are necessary in the circumstances and in the best interest of the parties hereto. On the 30/07/2015 both parties appeared before me and entered into a consent allowing the Notice of Motion in terms of prayer 2 thereof and also allowed the respondent to collect his personal effects especially clothes at 11.00am on 01/08/2015. Such exercise was to be supervised in the presence of the O.C.S Kakamega Police Station and in the presence of the Advocates on record. The respondent was to pay any costs to be incurred in the exercise by the OCS. For some reason the respondent did not collect his personal effects until 12/09/2015.

#### **The Submissions**

5. The respondent did not file a replying affidavit to the Notice of Motion nor did he file written submissions as agreed. The applicant's submissions are dated 16/09/2015 but filed in Court on 17/09/2015. The submissions are supported by one authority, namely the case of **Rolex Sabina Jalango –vs- George Jalango Otieno – Nairobi Civil Suit No.20 of 200 [2009] e KLR.** The applicant also relied on the provisions of Section 84(1) of the Marriage Act, No.4 of 2014 which provision confers power upon the Court to order a party to refrain from molesting a spouse or former spouse. Counsel for the applicant urged the Court to grant the orders as prayed.

#### **Analysis**

6. The applicant's Notice of Motion is unopposed. I therefore take it as a fact that the marriage of the parties herein which was celebrated on 06/12/1997 has turned sour and irretrievably broken down on account of the respondent's cruelty and desertion. The parties are separated because of the respondent's violence and cruelty. Even after this matter was filed in Court, the respondent has reportedly continued to harass the applicant and had to be warned to desist from doing so by an order of this Court made on 10/09/2015.
7. In the circumstances of this case, I find that the respondent has, by his silence conceded that the orders sought by the applicant are merited. It is clear that if the injunctive relief sought by the applicant is not granted, she will continue to be harassed not only through physical and verbal violence but also through the bad faith visits by the respondent. The applicant has stated and clearly demonstrated that she has known no peace or joy since 10/04/2007 when the respondent subjected her to physical and psychological torture and harassment. That this harassment has extended from the applicant to the neighbours.

#### **Conclusion**

8. In conclusion, I confirm the temporary order of injunction issued on 30/07/2015 by which the

respondent is restrained from molesting, harassing, threatening, annoying, creating disturbances and/or in whatsoever manner occasioning nuisances against the Petitioner/applicant hereof or from accessing, visiting, entering and or attempting to visit, access and or enter the Petitioners home and or place of residence pending the determination of the Petition herein.

9. The costs of this application shall be borne by the respondent.

Orders accordingly.

**Ruling, delivered, dated and signed in open Court at Kakamega this 8th day of October 2015.**

**R.N. SITATI**

**J U D G E**

In the presence of:

Mr. Shifwoka (present) for Petitioner/Applicant

Mr. Aburili (absent) for Respondent

Mr. Lagat - Court Assistant