

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 68 OF 2013

J H A.....PETITIONER.

VERSUS

B N K.....RESPONDENT

RULING

1. The Motion dated 3rd April 2013 seeks orders to restrain the respondent from harassing the petitioner and accessing her residence pending the hearing and determination of the divorce petition.
2. The petitioner accuses the respondent of cruelty. He is said to have on numerous occasions verbally abused and humiliated the petitioner, and to have even sexually abused their daughter. He is said to be based at Nakuru but visits Nairobi (where the petitioner lives) on weekends and public holidays. She avers that he will not be rendered homeless once the orders are made since he has a home at Nakuru. She further says that the lease over the *[particulars withheld]* Apartments is in her name.
3. She has attached documents to her affidavit to support her case. There is a marriage certificate as evidence that she and the respondent are married. There is a tenancy agreement dated 1st September 2012 bearing her signature and a medical report to support the claim that their daughter had been sexually assaulted.
4. The respondent replied to the application vide his affidavit sworn on 2nd October 2013. He denies the allegations made against him. He discloses that there is a children's case between him and the petitioner, being Nairobi **Children's Case No. 440 of 2013**. The buck of the affidavit dwells on matters touching on his role in the acquisition of matrimonial property and on his support for his children.
5. The petitioner has filed a further affidavit sworn on 17th October 2013. She reiterates the accusations she has made against the respondent in her earlier affidavit.
6. It was ordered on 3rd October 2013 that the application be disposed of by way of written submissions. Both parties filed their written submissions complete with authorities.
7. The principle ground on which the application is premised is violence. No allegations of physical violence are made in the affidavits, neither has any proof been provided of such violence. The petitioner merely complains of verbal abuse and humiliation. She also alleges sexual abuse of their daughter. I note that the documents on record on this do not at all point to the respondent. In any event no prosecution has been mounted for this obviously very serious offence.
8. Keeping a party out of their matrimonial home is a drastic measure. An order to that effect should be made only on concrete evidence. I do not have such evidence before me. There is nothing to indicate that the petitioner's life is in danger.
9. In view of everything I have said above, I have come to the conclusion that the application dated 3rd April 2013 is not merited and I hereby dismiss it.

DATED, SIGNED and DELIVERED at NAIROBI this 3rd DAY OF October 2014.

W. MUSYOKA

JUDGE

In the presence of Mr. Njuguna advocate for the petitioner.