

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Divorce Cause 62 of 2008

GWB. APPLICANT/PETITIONER

VERSUS

MB. RESPONDENT

R U L I N G

The application before the court is a Chamber Summons filed by the Petitioner herein dated 3rd June, 2009. It seeks orders that the Respondent do provide alimony pendente lite in the sum of 100,000/- per month until the divorce proceedings cause under which the application is brought, is finally heard and decided. The Applicant also seeks what she calls interim maintenance for herself and the two young children of the parties generally, of Kshs.300,000/- per month during the same period.

The applicant's application is supported by a Supporting Affidavit explaining out the claim dated the same date. A careful reading of the affidavit, however, shows total confusion. For example the figures of money purportedly needed by the Petitioner/Applicant shown in paragraph 7 of the affidavit, does not conform to the sum of Kshs.100,000/- or 300,000/- sought in the face of the application. It shows a sum amounting to Kshs. Almost 900,000/-.

I have perused the documents in the record. I see no further affidavit dated 1st December, 2008 referred to by the Applicant in her submission on 13th March, 2009 through M/s Quadros, applicant's counsel. In the absence of the further affidavit so spoken, of the court will have no justification to seriously consider the figures of sums of money demanded by the applicant towards the sought alimony pendente lite or other maintenance sums orally quoted in court by M/s Q. We note however, that the new figures raised by counsel tend to alter the applicant's claim from Kshs.100,000/- per month to Kshs.180,000/-

The Respondent filed a detailed Replying affidavit which answers Applicant's claims one to one. However, despite the replying affidavit being on the record, no one bothered to appear on behalf of the Respondent to put its contents across to the court. The contents thereof therefore, while not completely ignored, remain just part of the record.

On the other hand the Applicant advanced her case although ex parte to the court. She swears that she was forced to leave the matrimonial home to go and live with her mother due to the serious differences that arose between her and the Respondent. For that reason and because there was no reconciliation, she will continue living with her mother.

It is questionable whether her mother's house is a better place to live with the children of the couple when there is much space back in their matrimonial home, especially in respect to the children. It is not denied that the matrimonial house is a large house with space which could be conveniently divided between the spouses if the latter cannot wish to share lives. Services could be provided to each spouse at her or his quarters at the full expense that can be met by the Respondent. This could return the children to the life standard they were born in. This arrangement could further not stand on the way of either spouse to pursue for divorce if that is the chosen route.

However, that is neither here nor there. The applicants wants Kshs.100,000/- for alimony and maintenance pending the hearing and final determination of the main suit for divorce. It is not strictly opposed as the Respondent chose not to appear at court to defend. The court therefore sees no reason not to grant the prayer under these ex parte circumstances. It will do so.

ORDERS

1.The Respondent is hereby ordered to pay the Applicant alimony pendente lite and maintenance is assessed at Kshs.100,000/- per month until the suit for divorce herein is heard and finally decided

2. Parties are hereby given leave to apply.

Dated and delivered at Nairobi this 7th July, 2009.

D A ONYANCHA

JUDGE