



REPUBLIC OF KENYA

IN THE KADHI'S COURT OF KENYA AT BUNGOMA

MISC APPLICATION 8 OF 2018

TAM.....PLAINTIFF/APPLICANT

VS

HMG.....DEFENDANT/RESPONDENT

RULING

1. This is an application by way of chamber summons dated 7th November, 2018 made by the applicant seeking attachment of the respondent's salary of Ksh. 15,000/- monthly in execution of the court orders of 16th August, 2018. This was after the respondent agreed to pay to the applicant the said amount as monthly family maintenance by mpesa.

2. The application was premised on grounds that:

a) The parties being husband and wife were blessed with three issues.

b) The respondent ignored submission of Ksh. 15000 monthly family maintenance against the court order of 16th august 2018 and abandoned his duties to his family.

3. The respondent opposed the application through his replying affidavit dated 12th November 2018 and contended that the application is unmerited, nugatory and an abuse of the court process;

I. The applicant in disregard of the law seeks to attach more than 1/3 of judgement debtor/respondent's salary in execution thus offending the overriding objective.

II. The respondent in compliance of the court orders of 16th august 2018 has been submitting Ksh. 15,000/- monthly towards family maintenance to the applicant by mpesa (HMG1).

III. That though he earned a net of about kshs 61,000/- monthly that is susceptible to statutory deductions and in service of a loan obtained for the benefit of the family, he still supported his family (HMG2, HMG3) and attachment of salary would not be in best interest of family. He prayed for dismissal of the application and requested to be allowed payment of kshs 15,000/- monthly family maintenance by mpesa.

4. As a matter of fact, the court orders of 16th August, 2018 were made by consent of both parties especially the respondent who agreed to be submitting kshs 15,000/- monthly family maintenance by mpesa since he is a salaried employee at jubilee insurance company of Kenya Ltd.

5. On 14th November,2018, the applicant demanded attachment of kshs 15,000/- monthly family maintenance to enable plan and or meet family needs well. She narrated how she received as low as kshs 50/-, kshs 500/- etc. by mpesa from the respondent in an effort to raise kshs 15,000/- monthly given that he is salaried employee and received a net of about kshs 61,000/- monthly. She requested the court to attach the amount and order that the same be directly deposited along with rent and other bills to her account xxxx at gulf African bank to end the unrest.

6. The respondent on the other hand opposed the attachment of his salary arguing that he was in compliance of the court orders of 16th august 2018. He testified that he paid in instalments because the applicant was a wasteful person, is in repayment of a loan at rate kshs 25, 595/- monthly and was also responsible for rent payment and other bills. He however promised to pay kshs 15,000/- monthly maintenance at once by mpesa to the applicant if given chance.

7. After considering documents filed and evidence adduced by both parties, the court is duly bound to determine whether attachment of respondent salary was the best option in the circumstances.

8. Parties herein are in marriage as established under Islamic law and in determining their contention the court is guided by art. 170 (5) constitution of Kenya 2010 as read together with sec 5 and 6 of the kadhi's court act cap 11 along with other provisions of applicable law.

a). **Art 170 (5):** "the jurisdiction of a kadhi's court shall be limited to the determination of questions of Muslim law relating to personal status, marriage, divorce or inheritance in proceedings in which all the parties profess the Muslim religion and submit to the jurisdiction of the kadhi's court."

b) **kadhi's court act cap 11 sec (5) and (6):**

Sec (5): "The kadhi's court has been given jurisdiction to determine questions of Muslim relating to personal status, marriage. Divorce and inheritance in proceedings in which all parties profess the Muslim religion."

Sec (6): "The law and the rules of evidence to be applied in a kadhi's court shall be those applicable under Muslim law."

Whether the attachment of respondent's salary is fair in circumstances herein;

9. The respondent in compliance with the court orders of 16th August 2018 paid instalments as low as 50 kshs, 500 kshs, etc via Mpesa to raise the Kshs 15,000/- monthly family maintenance (TAMII). This action did not please the applicant and or good for the family well-being since he is a salaried employee and earned a net of about kshs 61,000/- monthly.

Though the respondent argued that the little instalments were made because the applicant was a wasteful person and had other bills to pay, the court was not convinced and the applicant request for salary attachment may have been caused by the respondent's behavior.

10. The court in protecting and preserving the relationship of the parties who still stayed together as husband and wife, and upon considering orders of 16th August 2018, direct that the kshs 15,000/- monthly family maintenance be paid at once to benefit the family well. Failure to which salary attachment will be the immediate option.

11. **Orders:**

1. Parties to stay together and observe peace as husband and wife.
2. Respondent to submit Ksh 15,000/- monthly family maintenance to Applicant once by Mpesa before 5th of each proceeding month.
3. Rent, electricity and water expenses responsibility of the respondent.
4. School and major medical expenses responsibility of the respondent
5. Parties to follow up for compliance of the orders herein after three months at the court's registry.
6. No orders as to costs.

Signed and delivered this 22nd day of November, 2018 at Bungoma.

D.S. RATORI

PRINCIPAL KADHI

In presence of:

1. CA – OKWARO
2. Both parties in person.