



**MAL v AMC (Civil Case 283 of 2012) [2016] KEKC 23 (KLR) (5 May 2016) (Ruling)**

*A M C v M A L [2016] eKLR*

Neutral citation: [2016] KEKC 23 (KLR)

**REPUBLIC OF KENYA  
IN THE KADHIS COURT AT MOMBASA  
CIVIL CASE 283 OF 2012  
AH ATHMAN, PK  
MAY 5, 2016**

**BETWEEN**

**MAL ..... APPLICANT**

**AND**

**AMC ..... RESPONDENT**

**RULING**

1. This is the plaintiff's notice to show cause under certificate of urgency for orders to attach 1/3 of the salary of the for the maintenance of the minor child RML.
2. The defendant was ordered to pay children maintenance of KES 9,000.00 per month for the two children R and MML as well as their education. He was allowed to pay the same in weekly installments. He was to pay her 25% of the value of the matrimonial house as mut'a and the plaintiff was ordered to give vacant possession of 75% of the said house.
3. Mrs. Kipsang' for the plaintiff submitted that the matrimonial house burnt down and one of the children M passed away as a result. The plaintiff contends, the defendant has not made payments for three months [January, February and March 2016] and that he had not been funding the child's lunch, and fare to school and has refused to renovate the house or pay mut'a. She submitted the outstanding amounts are KES 25,500.00 .
4. The defendant has filed a replying affidavit to show cause. He has attached copies of his pay slip, receipts of payments of the child maintenance through the plaintiff's advocate on record and school fees receipts. He stated that he had problems at work relating to imprest recovery and as result he has not been receiving any salary since November 2015. On his part, in the circumstances, he prays for the child maintenance to be reviewed downwards especially as he has other children and wife to take care of.



5. I have examined the receipts and pay slips annexed to the reply. It indicates the defendant has been making regular payments in settlement of the decree despite his getting nil salary at least since January 2016. He has however only attached one receipt of payment of KES 2,000.00 since January 2016. He owes the plaintiff the balance, KES 34,000.00 as at April 30, 2016.
6. The defendant has demonstrated to have paid fees up to April 2016. There is no contrary proof to this effect. He is discharged of any contempt in this regard.
7. One child has passed away. If all things were constant we would consider reviewing the child maintenance downwards. However the plaintiff now has no accommodation for the child and herself. The amounts we would have reduced goes towards the same. Accordingly we retain the current rate to be inclusive of accommodation of the child.
8. The matrimonial house has now burnt down. It is a loss to both parties. The issue of mut'a compensation is now therefore overtaken by events.
9. The total earnings of the plaintiff is about KES 61,000.00 [overtime allowance fluctuates] per month. most of it going towards imprest recovery. The amounts deducted and balances have not been properly explained. In any case It is the responsibility of the defendant to ensure he complies with the order. We however take cognizance of his challenges and will not, as provided by law, put a burden on him more than he can shoulder.
10. Attachment of the defendant's salary would have merit if the defendant had not demonstrated willingness to comply with the orders on maintenance as decreed by court. He has been regularly making the payments save for the indicated months in this year due to challenges with his employer. It is also not possible to order attachment of salary where the net salary reads nil. The prayer for attachment of defendant's salary is rejected but the defendant shall settle the balance [KES 34,000.00] and continue to pay the monthly child maintenance as earlier ordered.

Orders accordingly.

**DATED AND DELIVERED AT MOMBASA ON 5<sup>TH</sup> MAY, 2016**

**ABDULHALIM H. ATHMAN**

**PRINCIPAL KADHI**

**In the presence of:**

Mr. Yusuf K. Abdulrahman , Court assistant

Mrs. Kipsang' for Plaintiff

Defendant

