



IN THE COURT OF APPEAL

AT ELDORET

(CORAM: E. M. GITHINJI, HANNAH OKWENGU &

J. MOHAMMED, JJ. A.)

CIVIL APPEAL NO. 66 OF 2015

BETWEEN

M E K.....APPELLANT

AND

G L M.....RESPONDENT

(An appeal from the Judgment and Decree of the High Court of Kenya at Eldoret (Kimondo, J.) dated 19th March, 2015

in

ELDORET PETITION NO. 1 OF 2000)

JUDGMENT OF GITHINJI JA.

[1] This is an appeal from that part of the judgment of the High Court (*Kimondo, J*) granting maintenance to the respondent herein against the appellant in the following terms:

“The petitioner shall pay maintenance to the respondent of Kshs.20,000/= per month effective 30th April, 2015 and on each last day every succeeding month. The sums shall be payable until the occurrence of any of the following events: the respondent becomes capable of supporting himself; or he remarries; or, he dies whichever is the earliest.”

[2] On 11th January, 2001, the appellant filed a petition for the dissolution of the civil marriage solemnized between her and the respondent at the Registrar’s Office, Nairobi, on 25th August, 1989 for various grounds. In addition, the appellant claimed alimony pending suit, maintenance and secured provision. The respondent acting in person filed an answer to the petition and a cross-petition. By the cross-petition, the respondent prayed for the dissolution of the marriage and various other reliefs including alimony. After trial, the learned judge allowed both the petition and cross-petition and dissolved the marriage on the grounds of desertion and legal cruelty and in addition made the impugned maintenance order.

[3] In making the order for maintenance in favour of a husband against a wife, the learned judge invoked **Article 45(5)** of the Constitution which states:

“Parties to a marriage are entitled to equal rights at the time of the marriage, during marriage and at the dissolution of the marriage.”

The learned judge referring to that provision stated:

“Equality in marriage must surely relate to support of an impecunious spouse at the time of divorce”.

In arriving at the monthly maintenance of Kshs.20,000/=, the learned judge considered factors, *inter alia* that the appellant was a Professor at a University in [particulars withheld]; that the appellant had means; that the respondent had not held a job since December, 1990, and that

the respondent is not a man of means.

[4] At the time the petition was filed the Marriage Act (*Chapter 150 of Laws of Kenya*) and the Matrimonial Causes Act (*Chapter 152 Laws of Kenya*) were in operation. However, the Marriage Act No. 4 of 2014 which commenced on 20th May, 2014 was enacted. (*2014 Act*). The 2014 Act consolidated various laws relating to marriage and divorce and repealed previous laws including the former Marriage Act and the Matrimonial Causes Act.

[5] The 2014 Act provides for maintenance in **sections 77 - 83**. **Section 77** spells out the grounds for an order of maintenance and state in part:

77(1)

“The court may order a person to pay maintenance to a spouse or a former spouse –

(a) ...

(b)...

(c)...

(d) when granting or after granting a decree of separation or divorce.”

Section 95 of the 2014 Act gives power to the Rules Committee established under Civil Procedure Act (*Cap 21*) to make Rules regulating court practice or procedure under the Act.

It seems that no such Rules have been made especially relating to maintenance orders and how the discretion of the court to make maintenance orders should be exercised.

In the absence of any statutory guidelines of specific factors to be taken into account in exercising discretion to grant maintenance to a spouse, the courts will no doubt consider all the circumstances of the case and exercise the discretion judicially. The specific factors stipulated in **section 25(2)** of the repealed Matrimonial Causes Act, that is, the fortune of the spouses, the ability of the spouse and the conduct of the parties will continue to be relevant. Other relevant factors include the income of the respective spouses, financial needs, obligations and responsibilities present and in future and the duration of the marriage.

[6] As regards the appeal, I have had the advantage of reading the draft judgment of **Okwengu, JA**.

Firstly, I respectfully agree with the interpretation and application of **Article 45(3)** of the Constitution both by the trial judge and Okwengu, JA. that either spouse has a right to apply for maintenance from the other spouse.

Indeed, **section 77(1)** of the 2014 Act uses a word “*person*” in relation to powers of the court to order maintenance which connotes neutral gender leaving no doubt that the court has power to order either spouse to pay maintenance to the other. It is crystal clear from **Article 45(3)** and **section 77(1)** of 2014 Act that the obligations of spouses as regards maintenance is equal and reciprocal. In any case, the appellant did not contend in this appeal that the court has no jurisdiction to order a wife to pay maintenance to a husband.

Secondly, I agree that the provisions of the repealed Matrimonial Causes Act relating to maintenance were applicable to the case by virtue of **section 23(3) (b)** of the Interpretation and General Provisions Act which provides that the repeal of a law does not affect the previous operation of the law.

Lastly, I concur that in the absence of full disclosure by the parties of their means, there was no sufficient evidence on which an order of maintenance could have been judicially assessed and an order made. Apparently the assessment of maintenance at KShs.20,000/= per month was arbitrary.

Ultimately, I agree that the appeal should be allowed and the prayer for enhancement of the maintenance should be dismissed.

[7] Nevertheless, I have the misfortune to differ with Okwengu, JA. regarding one factor to be taken into account in considering an application for maintenance by a husband.

At paragraph 15 of the judgment, the learned judge states in part:-

“Therefore in an application by the husband among the factors that would be relevant is the justification for the reversal of the traditional gender role expectation that a man will ordinarily provide for his wife.” (emphasis added)

I understand the underlined phraseology to mean that when a husband applies for maintenance from his wife, the court would first consider as a relevant factor that the husband is traditionally and ordinarily expected to provide for his wife and then make a finding whether or not there is justification for departure from that responsibility before the order of maintenance is made.

[8] The first problem with the application of that factor is that after the Matrimonial Causes Act was repealed it currently has no statutory underpinning. Moreover, the repealed Matrimonial Causes Act was itself based on outdated English legislation which had notions of the Ecclesiastical courts that a wife was entitled to be maintained by her husband. That notion was justified by the fact that a wife would very unlikely have an income in those days. The English Matrimonial Causes Act, 1973 reformed the law. It, among other things, gave power to courts to order either spouse to provide maintenance for the other regardless of who was seeking divorce (*section 21, 23 and 24*).

[9] The second problem is the source of the “*traditional gender role*”. Is it the English common law or the various customary laws of Kenya Society? As observed above, the English Common Law has been modified by the Matrimonial Causes Act, 1973 making either spouse liable to make financial provision for the other. The customary laws are subject to the written laws and the Constitution.

[10] The third and most crucial problem is the constitutional validity of the traditional gender role as framed. Having accepted that **Article 45(3)** of the Constitution creates gender equality in family affairs and entitles either spouse to maintenance from the other spouse, it would be a derogation from the Constitutional principle of gender equality to prescribe a differential treatment for a husband seeking financial provision from his wife.

Furthermore, as **section 77** of the Marriage Act, 2014 entitles either spouse to seek maintenance from the other spouse, either spouse is by virtue of **Article 27(1)** of the Constitution entitled to equal protection and equal benefits of the law.

[11] From the foregoing, it is my humble view that the so called traditional gender role has been superseded by the provisions of the Constitution and Marriage Act, 2014 and is not therefore a relevant factor in determining whether or not an order for maintenance should be made in favour of a husband. Indeed, justification for the reversal of the traditional gender role is the Constitution and Marriage Act, 2014.

In my view the primary and relevant consideration when either spouse seeks maintenance from the other spouse is the financial affairs of the spouses.

[12] That notwithstanding, the Court being unanimous that the learned judge erred in ordering the appellant to pay maintenance to the respondent, the judgement of the Court is that the appeal is allowed, the order of the High Court granting the respondent maintenance against the appellant is set aside. Each party shall meet their own costs of the appeal.

Orders accordingly.

Dated and Delivered at Eldoret this 31st day of May, 2018.

E. M. GITHINJI

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JUDGE OF APPEAL

I certify that this is a true

copy of the original.

DEPUTY REGISTRAR

JUDGMENT OF HANNAH OKWENGU, JA.

[1] This is an appeal lodged by MEK who was the petitioner in Divorce Cause No. 1 of 2000. The respondent is her husband GLM who had also cross-petitioned for divorce. In the judgment delivered on the 19th March 2015, the trial judge made a finding that the marriage between the appellant and the respondent had irretrievably broken down through cruelty and desertion as both the petitioner and the respondent had deserted the marriage; that the couple had lived apart for 18 years; and that the marriage was a dry shell. In consequence thereto the trial judge ordered the marriage between the appellant and respondent dissolved, and the appellant to pay monthly maintenance of Kshs.20,000/= to her former husband (the respondent), with effect from 30th February, 2015 until the respondent either becomes capable of supporting himself or marries or dies. The appellant is aggrieved by the order for payment of maintenance, and has lodged this appeal against that part of the judgment.

[2] In his memorandum of appeal, the appellant has challenged the order for maintenance on 14 grounds. In reply, the respondent has filed a memorandum of opposition to the appeal and a prayer for enhancement of the maintenance amount contending that the appeal does not disclose any reasonable grounds, and that the appellant has not disclosed to the Court her income or property to justify review. The respondent prayed that as he is advanced in age, and is ailing, and the appellant is a Professor in a University in [particulars withheld], and has a good salary, the maintenance should be increased from Kshs.20,000/= to Kshs.50,000/=.

[3] During the hearing of the appeal, the appellant was represented by learned counsel who compressed the 14 grounds of appeal into three main issues: First, the issue whether the respondent proved that he deserved the maintenance. Secondly, whether the respondent proved before the learned judge that the appellant had the means and capacity to maintain him; and thirdly, whether the learned judge made a proper finding as to whether the respondent had married another wife or not.

[4] Counsel for the appellant submitted that it was not disputed that prior to the divorce the parties had been separated for a period of 18

years, during which period the respondent was maintaining himself; that the respondent did not demonstrate any drastic change in his circumstances as to justify an order for maintenance; that the respondent did not produce any material before the court to show that the appellant had the capacity or the means to maintain the respondent; that the sum of Kshs.20,000/= was based on mere speculation as there was no affidavit of means filed by either party.

[5] In addition, counsel for the appellant urged the Court to ignore the attempt by the appellant to introduce evidence through his appeal, to show that the appellant had means, as this evidence was not availed to the trial judge. It was contended that the trial judge ignored evidence that the respondent was cohabiting with another woman, and that this cohabitation was sufficient to prove that the respondent was not entitled to maintenance as he had remarried. The Court was therefore urged to allow the appeal and set aside the order for maintenance.

[6] The respondent who was unrepresented submitted that his financial position was evident as he could not even afford a lawyer; that though he is an economist specialized in the oil industry, the last time he had a salary was in 1991; that in 2013 he was appointed Executive Director of a company where he was entitled to a sitting allowance of Kshs.20,000/=; that the appointment only lasted for two (2) years; that he has experienced difficulties in getting a job as his former employer refused to give him references; and that he has only been doing voluntary work.

[7] The respondent explained: that he has been surviving through assistance from relatives; that he has had health challenges for which he had to go to India for treatment; that the expenses for the treatment in India were met through fund raising efforts from friends and church members; that he was diagnosed and treated for a heart condition; and that since then, he has to take medication worth Kshs.500/= daily.

[8] The respondent denied the allegation that he was cohabiting with another woman, and noted that the named woman was not included in the divorce proceedings as a co-respondent. He reiterated that although his four (4) children (by an earlier marriage) are working, they were not obliged to maintain him; that the legal responsibility to maintain him lies on the appellant who was his spouse; and that the appellant had left him hanging for fourteen (14) years during which period she was progressing in her career.

[9] This appeal presents a unique issue relating to spousal maintenance. This is the circumstances and extent to which a woman can be ordered to pay maintenance to her husband upon divorce. The appellant's petition for divorce was filed in 2000 when the Matrimonial Causes Act (now repealed) was still in force. The proceedings were therefore governed by that Act. Section 25(2) of the Matrimonial Causes Act (now repealed) stated as follows:

25. Alimony Pendete Lite, alimony and maintenance

“(1) In any suit under this Act, the wife may apply to the court for alimony pending the suit, and the court may there upon make such order as it may deem just:

Provided that alimony pending the suit shall in no case exceed one fifth of the husband's average net income for the three years next preceding the date of the order, and shall continue in the case of a decree nisi of the dissolution of marriage until the decree is made absolute.

(2) The court may, if it thinks fit, on any decree for divorce or nullity of marriage, order that the husband shall, to the satisfaction of the court, secure to the wife such gross sum of money or annual sum of money for any term, not exceeding her life, as, having regard to her fortune, if any, to the ability of her husband and to the conduct of the parties, the court may deem to be reasonable.

(3) In any such case as aforesaid the court may, if it thinks fit, by order, either in addition to or instead of an order under subsection (2) of this section, direct the husband to pay to the wife during the joint lives of the husband and wife such monthly or weekly sum for her maintenance and support as the court may think reasonable:

Provided that—

- **(i) if the husband, after any such order has been made, becomes from any cause unable to make the payments, the court may discharge or modify the order, or temporarily suspend the order as to the whole or any part of the money ordered to be paid, and subsequently revive it wholly or in part as the court thinks fit; and ?**
- **(ii) where the court has made any such order as is mentioned in this subsection and the court is satisfied that the means of the husband have increased, the court may, if it thinks fit, increase the amount payable under the order”?**

[10] It is clear from the above provision that as at the time of passing the Matrimonial Causes Act, the intention was that only a husband should pay maintenance to a wife, and not vice versa. The only exception was in a situation where the wife sought divorce on ground of the husband's insanity, in which case under section 31(2) of the Matrimonial Causes Act an order for payment of maintenance could be made in favour of the husband. This was understandable because the husband could not maintain himself due to his mental state. The promulgation of the Constitution of Kenya 2010 ushered in a new era of equality among spouses as Article 45(3) of the Constitution provides that:

“Parties to a marriage are entitled to equal rights at the time of the marriage, during the marriage, and at the dissolution of the marriage”

[11] The issue is whether this equality applies to spousal maintenance and if so how to apply this equality in making an order for maintenance. In his judgment the trial judge taking note of this Constitutional provision stated as follows:

“Article 45(3) of the Constitution provides that parties to a marriage are entitled to equal rights at the time of the marriage, during the marriage and at dissolution of the marriage. Equality in marriage must surely relate to support of an impecunious spouse at the time of divorce. The petitioner had sought maintenance. But the husband is not a man of means. The husband seeks maintenance. The petitioner is well placed to support him... I cannot think of a better case where the wife should maintain the husband. The Court has discretion to order the amount of maintenance I think a sum of Kshs.20,000 per month is just, reasonable and sufficient. I have taken into account that the children are all grown up and the respondent is living in his rural house.”

[12] As already noted the appellant’s petition for the dissolution of the marriage, was filed before the Constitution of Kenya 2010 came into effect, Section 7 of the Transitional and Consequential Provisions in the Sixth Schedule to the Constitution, requires that all law in force immediately before the effective date of the Constitution, **“be construed with the alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with the Constitution.”**

[13] I concur with the trial judge that Article 45(3) of the Constitution should be read into section 25(2) of the Matrimonial Causes Act with the result that both spouses will have an equal right to apply for maintenance, and therefore the husband’s right to apply for maintenance is no longer limited to only cases where he suffers from insanity. Indeed this is consistent with the position under the Marriage Act No 4 of 2014, sections 77 of which gives the court the power to order payment of maintenance to a spouse or former spouse, so that maintenance can be paid to either a wife or husband.

[14] Nonetheless, whether the maintenance order should issue or not is a matter dependent on the discretion of the trial judge, to be exercised judicially taking into account the circumstances of the particular case. Section 25 of the Matrimonial Causes Act, indicates some of the factors that should be taken into account in making an order for maintenance. These factors include, the fortune if any of the spouse in whose favour the order is to be made, the ability of the spouse against whom the order is made, and the conduct of the spouses.

[15] Equality in marriage is not a principle to be applied blindly nor is it intended to encourage dependency by one spouse. It is a situation where each party makes a contribution. In other words it is not shifting the burden, but the sharing of responsibilities and benefits taking into account the gender limitations. Therefore in an application by the husband among the factors that would be relevant is the justification for the reversal of the traditional gender role expectation that a man will ordinarily provide for his family.

[16] The main issue for determination in this appeal is whether the circumstances of this case were appropriate for the making of an order for spousal maintenance in favour of the respondent. In addressing this issue, we are obliged to consider whether there was sufficient evidence before the trial judge upon which he could conclude that the respondent was not a man of means, and that the appellant had sufficient means to maintain him; whether the respondent had another “wife”, and if so whether this disqualifies him from payment of maintenance; and if the respondent had no other wife whether this Court should enhance the amount of maintenance to a sum of Kshs 50,000/= as proposed by the respondent.

[17] Rule 44 of the Matrimonial Causes Rules, (now repealed) provided as follows:

(1) Where a husband is served with a petition in which alimony pending suit is claimed, he shall within fourteen days after entering an appearance file an affidavit setting out full particulars of his property and income.

(2) Where a husband is served with a notice of an application for alimony pending suit, permanent alimony, maintenance, maintenance of the children, a secured provision, periodical payments or securing periodical payments to a wife, he shall, within fourteen days after service of the notice upon him or, if he has not at the time of such service entered an appearance, within fourteen days after entering an appearance, file an affidavit setting out full particulars of his property and income, unless in the case of any such application other than an application for alimony pending suit the wife at the time of service of the application therefor gives notice to him or to his advocate of her intention to proceed with the application upon the evidence already filed on her application for alimony pending suit.

(3) Where a wife is served with a notice of an application for alimony pending suit, a permanent alimony, maintenance, a secured provision or periodical payments, the provisions of paragraph (2) of this rule shall apply to the filing of an affidavit by the wife setting out full particulars of her property and income as they apply to the filing of an affidavit by the husband as to his property and income.

[18] In her petition the appellant sought alimony pending suit, while in his response and cross petition the respondent also sought alimony. This means that both the appellant and the respondent were under an obligation to comply with Rule 44 of the Matrimonial Causes Rules, and file an affidavit of means setting out full particulars of their property and income, at the latest within 14 days after service of the petition/cross petition.

[19] In **P K M v R P M [2017] eKLR** this Court explained the purpose of filing these affidavits as follows:

“The provisions in Rule 44 of the Matrimonial Causes Rules requiring spouses to file affidavits setting out full particulars of property and income (generally referred to as affidavit of means) where alimony or maintenance is sought must be seen in this light: They are to assist the court to make an informed decision. Indeed under Rule 48 of those rules for example, the court is empowered to undertake “investigation” and has power to order discovery and production of any document or call for further affidavits.”

[20] The proviso to section 25(1) of the Matrimonial Causes Act placed a fetter on the court’s discretion by directing that no more than one fifth of the husband (read in ‘or wife’s’) average income for the last three years preceding the order, should be awarded as alimony pendent lite. To be able to make a decision that conformed to this requirement, it was imperative that information be availed to the court concerning

the assets and income of each party as well as their financial needs and obligations.

[21] Even though section 25(1) of the Matrimonial Causes Act addressed only the need for information on the income of the party against whom the order of alimony was sought, a fair decision could not be arrived at without knowing the assets and income if any, and the needs of the party seeking alimony. Indeed section 25(2) provided a more balanced view by requiring the court to take into account the conduct of the parties in addition to the financial position of both parties. Therefore, without the court having the benefit of the affidavit of means from each of the parties giving their particulars of property, income and expenditure, the court could not exercise its discretion judicially, but would be groping in the dark, and the resultant amount awarded, nothing more than guess work.

[22] I have carefully perused the proceedings of the trial court as reflected in the record of appeal. None of the parties filed an affidavit of means as required under Rule 44 of the Matrimonial Causes Rules. The respondent did file an application that was stated to be under “Cap 152 Rule 31, 40(1) 44(3) and 43” in which he sought alimony pending suit, permanent alimony, maintenance and a secured provision. As I appreciate that the respondent did not have the benefit of counsel, I assume that the rules, which he refers to in his application, are the Matrimonial Causes Rules. These are the Rules that were applicable in such an application.

[23] The respondent’s application was supported by an affidavit sworn on 13th March 2001 in which the respondent swore *inter alia* that he had not been in employment since 1990; that he did not have any regular income; and that the appellant was a highly paid lecturer who as at the time the respondent swore the affidavit, was earning Kshs 40,000/=. In addition to the affidavit the respondent filed a notice to produce under Order 12 Rule 8 of the Civil Procedure Rules in which he required the appellant to produce several documents including her pay slip for 1989 and 1993, and Bank statements for her account from December 1995 to December 1996. On her part the appellant did not file any affidavit stating her income or property.

[24] From the undisputed evidence that was before the trial judge, the parties had lived apart from 1996. Therefore, as at the time of the judgment i.e. 19th March 2015, they had lived apart for 18 years, each leading his/her life independently. In 2003 the appellant left the country for South Africa where she pursued her doctorate degree and where she currently works and resides. It is instructive to note that there were no issues of the marriage between the appellant and the respondent.

[25] The respondent was unemployed even before the parties started living apart, and has remained unemployed for most of this period. No evidence was adduced that either party was supporting or maintaining the other during any time in the period that they have lived apart nor was any evidence adduced before the trial judge of any special hardship that made it impossible for the appellant to support himself.

[26] The respondent claims that he has not been able to get a well sustaining job, hence the reason why the appellant should maintain him. In his answer to the petition and cross petition the respondent maintained that he contributed significantly to the current wellbeing of the petitioner and that as a lawful spouse he was entitled to support if and when in need. This reveals that the respondent’s motive for applying for maintenance was that he felt entitled to a share in the appellant’s money, because in his view the appellant was beholden to him for her career progression.

[27] I reiterate that maintenance is neither a right nor an entitlement. It is a discretionary order the availability of which is dependent on the circumstances of the case. As already stated, it was imperative for the trial judge to have appropriate information upon which he could judicially exercise his discretion. In this regard, the appellant having failed to file any affidavit of means she has only herself to blame. Although she has maintained that the deceased is married to another woman one “N”, there is no evidence in support of this. She did allege in her evidence before the trial court that the respondent had committed adultery with “N” but this was based on pure suspicion and rumor, and was rightly rejected by the trial court.

[28] The respondent also did not avail any information to the trial court regarding his financial state that could have enabled the trial judge make an informed decision. Other than the oral assertions made by the respondent there was no evidence in support of the conclusion that he was impecunious, and not a man of means. Besides, the fact that one is not in salaried employment does not necessarily make one impecunious or destitute.

[29] The respondent conceded that the appellant was the sole provider of the family during the time that they lived together at the University where the appellant worked. There was no evidence at all to show what efforts he had made to alleviate this burden from the appellant. For a man who was under no disability, it looks like he did not do much to improve his standard of living. Further, there was no evidence tendered to prove that after the parties stopped living together in 1996, the appellant continued to maintain the respondent or provided an exclusive financial basis for the respondent to rely on.

[30] It would be wrong to allow the respondent to treat the divorce as a windfall to improve his standard of living by extracting maintenance from the appellant. The appellant cannot be faulted for the respondent’s inability to get a well-paying job nor can the respondent strictly take credit for the appellant’s progression in her career. Moreover, the respondent did not demonstrate that he has been subjected to a defined standard of living that will change due to the dissolution of the marriage. The parties have not lived together since 1996 when the respondent packed his bags and walked out of the matrimonial home then in the University where the appellant worked. The respondent has not provided any basis for an order to be made for his maintenance by the appellant eighteen years later. If he truly required that maintenance he would have sought it soon after the separation.

[31] I find that in the circumstances of this case, the conduct of the respondent was such that he was not deserving of maintenance from the appellant. In addition, whereas it was possible for the learned judge to draw inference on the financial capability of the appellant due to her being a professor, there was no concrete evidence regarding her income or financial obligations, such as to lead to a conclusion on reasonable maintenance for the respondent. The attempt by the respondent to give a breakdown of his expenses and produce evidence of the appellant’s possible income at this late stage cannot help as this evidence was never availed to the trial judge.

[32] I reiterate what this Court stated in **P K M v R P M** (*supra*) :

“Whether a spouse is deserving of spousal support is a matter dependent on the circumstances of each case based on the evidence presented to the court. The court must carefully and proactively examine the financial circumstances of both parties when considering whether to grant relief by way of maintenance and the quantum thereof.”

[33] I have come to the conclusion that the evidence before the trial judge did not justify the exercise of the court’s discretion in ordering maintenance in the respondent’s favour. Nor did the court have sufficient information upon which it could make an informed decision regarding the financial ability of the appellant and the requirements of the respondent. It would be against public policy to encourage a situation where a spousal maintenance order is granted to a man for the simple reason that the woman has proved more industrious than the man. The order of maintenance issued in favour of the respondent is nothing more than the sword of Damocles hanging over the appellant’s head to remind her of her failed marriage. Such an order is neither fair nor just.

[34] Accordingly, I would reject the prayer for enhancement of the maintenance amount, allow the appeal, and set aside the order of maintenance. This being a family dispute each party should pay their own costs.

Dated and delivered at Eldoret this 31st day of May, 2018.

HANNAH OKWENGU

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JUDGE OF APPEAL

I certify that this is

a true copy of the original.

DEPUTY REGISTRAR.

JUDGMENT OF J. MOHAMMED, JA.

I have had the advantage of reading in draft the Judgment of **Hannah Okwengu, JA.** I am in full agreement with her reasoning and conclusions and, therefore, have nothing useful to add.

Dated and Delivered at Eldoret this 31st day of May, 2018.

J. MOHAMMED

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JUDGE OF APPEAL

I certify that this is a true

copy of the original.

DEPUTY REGISTRAR