



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NANYUKI
DIVORCE CAUSE NO. 3 OF 2017

T. K. M.....PETITIONER

versus

C. M. N.....RESPONDENT

JUDGMENT

1. T.K.M (hereinafter referred to as the wife) and C.M.N (hereinafter referred to as the husband) were married on 11th June 2010 in a Civil Marriage. After their marriage the husband and wife cohabited together. In that cohabitation they were blessed with one child A.G who was born on 6th September 2010. The husband is a [particulars withheld] while the wife is a [particulars withheld].
2. The wife has petitioned for a decree of dissolution of that marriage on the ground of cruelty of the husband.
3. The particulars of cruelty are that the husband has ungovernable temper; habitually used violence and obscene language against the wife; threatened to shoot the wife; attempted to sodomize the wife; misused family finances; frequently arrived home drunk; and had been quarrelsome to the wife.
4. The wife stated in evidence that she did not condone the husband's cruelty. That there had been attempts to reconcile them by their parents but to no avail.
5. The wife moved away from the family home in November 2016 together with the child of the marriage.
6. The wife by her petition seeks dissolution of the marriage and custody of the child of the marriage.
7. Although the husband was served with the petition he failed to defend the same and therefore did not offer any evidence.
8. What amounts to cruelty in divorce matter has never been definitively stated. The Court of Appeal in the case JSM –v-ENB [2015]eKLR stated as much thus:-

“The last point, which has been made time and again by various courts, and which is worthy reiterating here, is that there is no comprehensive definition of cruelty. Each petition founded on cruelty must be decided on its own facts because whether cruelty is proved or not is a question of fact and degree. The conduct complained of must be looked at holistically and in the light of the parties themselves. Therefore it is not very helpful to rely on fact of previously decided case as precedent.”

9. There has been some attempt to narrow down the definition of cruelty in various cases. In the case of **MEME –v- MEME [1976 -80] KLR 17** the court had this to say:-

“It must be more than trivialities. In many marriages there are occasional outbursts of temper, occasional use of strong language, occasional offended silences. These are not sufficient to amount to cruelty in ordinary circumstances, though if carried to a point, which threatens the health of the other spouse, the law will not hesitate to give relief.”

10. I had the opportunity to receive the evidence of the wife and in so doing I formed the opinion that she had proved her case on a balance of probability. She narrated the numerous cruelty she suffered in the hands of the husband.

11. Accordingly in the light of the evidence of the wife the judgment of the court is:-

(a) The marriage between T.K.M and C.M.N is hereby dissolved on the ground that it has irretrievably broken down due to the cruelty of C.M.N as provided under section 66 (6)(b) of the Marriage Act No. 4 of 2014.

(b) A decree Nisi shall issue and shall be made absolute within 30 days from today’s date.

(c) C.M.N shall pay costs of this petition.

(d) T.K.M is awarded custody of the child A.G.

DATED and DELIVERED at NANYUKI this 31st day of JANUARY 2018.

MARY KASANGO

JUDGE

CORAM

Before Justice Mary Kasango

Court Assistant: Njue / Mariastella

For applicant

For Respondent:.....

COURT

Judgment read in open court.

MARY KASANGO

JUDGE