



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

DIVORCE CAUSE NO. 33 OF 2014

R W N.....PETITIONER

VERSUS

N K M.....RESPONDENT

JUDGEMENT

1. The petitioner pleads in her petition that she and the respondent contracted a marriage under Kikuyu customary law sometime in 1996. The parties thereafter solemnised the said marriage on 11th April 2007 under the Marriage Act, Cap 150, Laws of Kenya, now repealed, at the Registrar's office at Nairobi, and were issued with a marriage certificate serial number [Particulars withheld]. They were blessed with issue, one child, C M, now adult. It is pleaded that since the celebration of the marriage the respondent has treated the petitioner with cruelty, committed adultery and deserted her. She pleads that the marriage has irretrievably broken down. She would like the marriage dissolved, to be awarded alimony and maintenance, all the matrimonial assets to be given to her as the same were bought with her money, orders to restrain the respondent from collecting rent from her property, and costs

2. Regarding cruelty it is averred that the petitioner is a person of ungovernable temper who has persistently threatened to kill her and himself, has threatened to make the petitioner physically disabled, has no regard for petitioner and has been bringing women to the matrimonial home, has wilfully neglected to maintain her, has severally chased her out of the matrimonial home and has denied her conjugal rights. The respondent is characterised as a serial adulterer. He is accused of having committed adultery with several women, known and unknown to the petitioner. She has named one of the women as their neighbour, going by the name of Mama D, whom he made pregnant and as at the time of filing the petition expecting their child. She also mentions a F, that the respondent was allegedly bringing to the matrimonial home in the latter course of 2011. On desertion, she pleads that the respondent has been going out with other women.

3. The respondent filed an answer to the petition and a cross-petition. He denies the alleged Kikuyu customary law marriage between him and the petitioner. He denies that C M was their child, saying that he never acquired any parental responsibility over him as the child never stayed with them but with the petitioner's mother. He denies the allegations of adultery, cruelty and desertion. He pleads that it was the petitioner who deserted the matrimonial home in 2014. He accuses her of meting out cruelty upon her by denying him his conjugal rights, throwing tantrums and shouting entire nights for several nights, threatening to kill him and assaulting him. On maintenance he pleads that she has not laid any basis for it. On the property he avers that he bought the same without assistance from her. He cross-petitions for a declaration that the property at Riverside Kayole South Nairobi being plots numbers [Particulars withheld] be declared to be matrimonial property to be shared between the two of them as the court shall deem fit. He also seeks a permanent injunction to restrain the petitioner from coming close to him or assaulting him within Riverside Kayole South Nairobi being plots numbers [Particulars withheld].

4. On 30th October 2014, the Deputy Registrar cleared the petition to proceed as defended.

5. The Petitioner testified on 19th May 2015. Her testimony gave vent to the allegations made in her petition. She stated that they had a marriage ceremony at Sheria House in 2007, but had begun to cohabit in 1996. They lived at Kayole, had no child of their own, although she had had a child prior to the marriage. Everything was okay, until the respondent began to be unhappy that they were not getting a child. The respondent brought home a woman called F K, with whom they lived for three months in 2009. She later left and he rented her accommodation elsewhere. The petitioner left the matrimonial home in 2014, and later heard that he had another woman called Mama D with whom they had a child. She testified that she had bought the seats and mattresses, among other items in the matrimonial home. Before she left they had been sleeping in separate rooms for two months. She testified that she left home after a series of acts of harassment by the respondent, which included assault and being locked out. She stated that she was the one who acquired most of the assets. She took loans at her place of work, to acquire all those assets listed in the cross-petition. She stated that all the plots were developed. She got money for the land and materials, while he supervised the construction and paid the workers. All the assets were registered in his name save for one. She conceded that a property described as [Particulars withheld] was not hers.

6. The respondent testified on 13th July 2017. He testified to getting married to the petitioner in 1996, before solemnising the same in 2007. They began to live in their own property from 2001. The petitioner was said to have left the matrimonial home in 2014, and to have had

spurned all efforts at reconciliation. He talked her insulting him severally, and of he not assaulting her at all and at time. After she left the home, she allegedly sent him threatening text messages. He made reports of the same at the Kayole Police Station. He said that he too wanted divorce as all efforts to reconcile the marriage had failed. He said that he saved to acquire the property. He said that all the assets were in his name. He mentioned that [Particulars withheld] was acquired in 1994 before he married the petitioner. He also produced documents showing that plot number [Particulars withheld] was acquired before the marriage. He asserted that whatever he acquired before he married the petitioner belonged wholly to him. He also gave details of how the said assets were developed

7. At the conclusion of the oral hearings, the parties filed written submissions. I have read through them and noted the arguments made therein. Only two issues fall for determination, whether the marriage ought to be dissolved and what to do with the property alleged to be matrimonial property.

8. On whether I should dissolve the marriage, I note that both sides allege violence from either side. It is conceded by both that they are no longer living together, the petitioner having left in 2014. Both talked of efforts to reconcile which bore no fruit. I am satisfied that there was violence within the marriage, which apparently forced the petitioner out of the matrimonial home. I am also persuaded that the respondent treated the petitioner cruelly by having affairs with other women, openly to spite the petitioner. I am also satisfied that the marriage herein has totally broken down.

9. On the matter of maintenance and alimony prayed for in the petition, I do note that at the trial the petitioner did not marshal any evidence in support thereof. She did not file any affidavit of means; neither did she lead evidence on her needs.

10. Details on the property in dispute would suggest that some was acquired before the marriage, while the rest was acquired during coverture. The respondent says that to buy peace he had agreed to have the petitioner have her name on some of the title documents. That sounds like an admission to me that the said property was matrimonial property. There is no dispute that [Particulars withheld] were acquired before the marriage. There is an agreement, dated 24th February 2014, wherein the parties had agreed on distribution of the assets. The respondent was to take the assets acquired prior to the marriage and the petitioner the rest. The agreement was signed by both sides, in the presence of witnesses. Both acknowledge the agreement.

11. In the end the orders that I shall make in disposal of the cause are as follows -

- (a) That the marriage between the petitioner and the respondent, celebrated on 11th April 2007, is hereby dissolved;
- (b) That decree *nisi* shall issue forthwith, to be made absolute within thirty (30) days;
- (c) That matrimonial property shall be shared out as per the terms of the agreement dated 24th February 2014 so that:
 - (i) the petitioner shall have plots numbers [Particulars withheld]; and
 - (ii) the respondent shall have plots numbers [Particulars withheld] ;
- (d) That each party shall bear their own costs.

DATED, SIGNED and DELIVERED at NAIROBI this 27TH DAY OF JULY, 2018.

W. MUSYOKA

JUDGE