



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO.16 OF 2015

CA A APETITIONER

VERSUS

E M M RESPONDENT

JUDGMENT

1. The petitioner got married to the respondent on 1st December 2008 to EMM. The said marriage was solemnized on 4th March 2009 under the Marriage Act, Cap 150 Laws of Kenya. After the celebration of the said marriage the parties cohabited together at Githurai 45 in Nairobi and were blessed with one child of the marriage JMM who is 2 years and 2 months at the filing of this petition.

2. The petitioner alleges that the respondent has been cruel to her during the pendency of the marriage. She particularized the said cruelty as follows; the respondent was assaulting and using verbal abuse to the petitioner without provocation exposing her to mental torture, has refused to provide for the minor. The respondent has been mistreating his stepson M O B by slapping him for no reason and had on occasion organize with illegal sects to evict the petitioner from her rental house at Kasarani and threatening to petrol bomb their house without any justifiable reason. That the respondent on 9th September 2014 the respondent moved out of their house at Wendani with all his belongings. The respondent has allowed his children to shout and abuse the petitioner for no apparent reason. That when the petitioner was expectant and started bleeding he left her unattended and she had to be rushed to hospital by good Samaritans. That on diverse dated in June 2014 he struggled her in front of her child leaving her with a lot of pain and did not bother to take her to hospital. The respondent has also exposed the minors to other extra marital relationships. That on 27th August 2014 without any justifiable cause twisted the petitioner's right knee causing her grievous harm.

3. The petitioner avers that the respondent has been having multiple extra marital affairs with house help one Mercy Syombua and other house helps. The cruelty and adultery has caused the petitioner unbearable pain and agony resulting to the marriage irretrievably breaking down.

4. The petitioner prays for dissolution of her marriage to the respondent, legal custody of the child of the marriage and cost of the cause.

5. The respondent in his answer and cross petition stated that he and the petitioner work together at [particulars withheld] Primary school and the petitioner had brought his disrepute by making disparaging remarks about his sexual conduct with the house helps. Allegations, which the respondent denies. The respondent denies the cruelty allegations raised by the petitioner stating that he has never assaulted the petitioner or his stepson MOB but has only offered him love and taught him how to save and disciplined him when he misbehaved adding that he has been an exceptional father to his 2-year-old son. He avers he has no association with the alleged sect adding that he has not allowed his children to disrespect the

petitioner and has repeatedly impeded all his children to relate well. That he has nursed his petitioner when ailing from her Asthma attacks and has regularly assisted her to take her medication in timely fashion when the need arose. That he catered to the petitioner's expenses over and above the expected degree and even paying for her Master's degree, catering to the household expenses including those of his stepson. That he was always working or in evening classes for her Master's Degree. The petitioner's absence from home made it necessary for the respondent to oversee the running of the household and denies having any extra marital affairs with the house helps as alleged by the petitioner.

6. The respondent in his cross petition states that the petitioner has been rude and abusive to the respondent and has maintained an ungovernable temper, wild unfounded allegations of infidelity causing the respondent tension, undue stress and trauma. That the petitioner has denied him love and affection and has been brutally cold and aloof for the 6 years they have been married and she has not been emotionally supportive to him causing him to feel rejected and suffer psychological trauma. The petitioner has rarely bothered to assist the respondent in meeting the numerous needs of the home and seldomly spends time with the family leaving the respondent to struggle to meet the same alone. That the petitioner has been unco-operative with the respondent and has despised and/or undermined efforts by the petitioner to sort out their matrimonial problems through counseling causing the respondent to suffer shame embarrassment, mental anguish and pain. As a result of the said cruelty the respondent has suffered anxiety, insomnia, low self-esteem and has lost a lot of weight and been forced to live a life of solitude without the expected love, affection and companionship from a wife in a marriage. The petitioner has not made any attempts to reconcile the marriage thus making the respondent feel unloved, uncared for and emotionally devastated. He seeks the court to grant a divorce dissolving his marriage to the petitioner and joint legal custody of the child of the marriage JMM.

7. The respondent did not attend court when the matter came up for hearing. The petitioner reiterated the averments as raised in her petition adding that she moved out of the matrimonial home sometime in 2013 when the respondent and his family threatened her. That the respondent followed her and it was then that she found out that the respondent was sleeping with the house help one Monica Syombua and that the respondent had a family, which he did not disclose to her. That he would go visit them while lying to her he was going home. She stated that she had a son before she got married to the respondent from a previous relationship whom he started abusing in 2010 and around that time he introduced her to two of his children whom he got out of wedlock. That in 2014 the respondent brought Mugiki to kill her forcing her to move to another place. That the respondent has refused to take a HIV tests and he walked out on 9th September 2014 and has never come back.

8. The petitioner has alleged cruelty and adultery on the part of the respondent whilst the respondent alleges cruelty against her. Cruelty and adultery are grounds for divorce under the Matrimonial Causes Act Cap 152 (now repealed) and also the Marriage Act 2014. For the court to grant the orders sought it must be satisfied that the petitioner has established a case on cruelty and or adultery. In the case of *Alexander Kamweru v Anne Wanjiru Kamweru [2000]eKLR*, It was held that, "*Certainly cruelty or desertion may be proved by a preponderance of probability, that is to say that the Court ought to be satisfied as to feel sure that the cruelty or desertion, or even adultery (all being matrimonial offences) has been (as the case may be) established*".

9. The Petitioner's alleges cruelty and narrates various incidences which in my view amount to cruelty. The petitioner has adduced a letter from St Francis Community Hospital dated 15th January 2015 stating that the petitioner had been treated at their facility for a sprained knee secondary to an assault and was treated with analgesics and knee support. From the foregoing I find that the petitioner has adduced sufficient proof to convince this court that the factual circumstances would suggest that the Respondent's conduct caused or threatened to cause actual danger to the Petitioner's life or limb. Am guided by the case of *DM v TM [2008] 1 KLR 5*, Chesoni J (as he then was) held that, "*To establish cruelty the complainant must show to the satisfaction of the court: – misconduct of a grave and weighty nature real injury to the complainants health and reasonable apprehension of such injury that the injury was caused by misconduct on the part of the Respondent, and that on the whole the evidence of the conduct amounted to cruelty in the ordinary sense of that word*".

10. The respondent did not attend court neither did he adduce evidence to support the cross petition. The same is dismissed.

11. The petitioner has adduced sufficient evidence to support the ground of cruelty, I also find that the said marriage has irretrievably broken down. I therefore dissolve the marriage between the petitioner and the respondent that was celebrated at the Registrar's of Marriages at Nairobi on 4th March 2009. A decree nisi to issue and to be made absolute within 30 days. Each party to bear their costs. It is so ordered.

Dated signed and delivered this 15th Day of December ,2016.

R. E. OUGO

JUDGE

In the presence of:

.....**For the Petitioner**

.....**For the Respondent**

Ms. Charity

Court Clerk