



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
DIVORCE CAUSE NO. 25 OF 2013

E N N.....PETITIONER

VERSUS

P M M.....RESPONDENT

JUDGMENT

1. The Petitioner has filed a petition dated 20th January 2013 seeking the dissolution of her marriage to the respondent. She got married to the respondent under Kamba Customary law 2007 and later solemnized the said marriage on 29th September 2007 at the Registrar's Office, Nairobi. After the said marriage the petitioner and the Respondent cohabited in Nairobi and later on moved to the United Kingdom. The parties have one issue of the marriage M M M born on 4th August 2010. The petitioner is a nurse while the respondent is a lecturer and both reside in the United Kingdom and are domiciled in Kenya.
2. The petitioner claims that since after the said marriage the respondent has treated her with cruelty and his willful and unjustifiable character is one to cause danger to the physical and mental health of the petitioner. She alleges that the respondent has committed adultery by engaging in sexual relationships and dating several women online known and unknown to the petitioner. She particularized cruelty as follows;
 - i. That the respondent is a man of ungovernable temper has persistently threatened to cause grievous bodily harm to the petitioner and her daughter.
 - ii. That the respondent has refused to take parental responsibility for the minor
 - iii. The respondent has been treating the petitioner of late with utter contempt and most of the times not even talking to the petitioner at the moment, he has absconded from the matrimonial home.
 - iv. That the respondent has willfully neglected to maintain the petitioner and the child.
 - v. That the petitioner has on several occasions found the respondent with other women and the respondent has actually stopped having any sexual relationship with the petitioner thereby denying the petitioner her conjugal rights and the respondent has basically deserted the petitioner.
3. The petitioner claims that the respondent has absconded from the matrimonial home and obtained a separate residential accommodation. She seeks dissolution of the marriage, alimony and maintenance for the child of the marriage and custody of the child of the marriage.
4. The respondent despite being served did not enter appearance or file an answer to the petition. The petitioner applied for Registrar's certificate and the matter proceeded as an undefended petition.

5. The petitioner testified that she got married to the petitioner on 29th September 2007 at the AG's office at Sheria House and has a 4 year old child with the respondent. They lived together for 3 years and used her to get to the United Kingdom and once he obtained permanent residence the marriage ended. She stated that she had a daughter from a previous relationship who she claims was mistreated by the respondent. It was her testimony that the respondent moved out when the petitioner was 6 months pregnant and prior to which she and the respondent did not share a bed for 18 months nor have sex with her despite living together and it was during this period that the respondent started internet dating. At the time the respondent was not working and she was the sole bread winner. On obtaining a permanent residence the respondent deserted the matrimonial home. She denied condoning the respondent's behavior adding that there was no likely hood of reconciliation with the respondent. She informed the court that there was a children's matter No. 606 of 2013 and had she been granted custody of the child of the marriage. She sought maintenance and cost of suit.
6. On cross examination by the court she stated that because of the relationship her daughter was affected and she had to bring the children back to Kenya and the same are in the custody of her brother. She also sought contribution on maintenance of the child of the marriage stating that the respondent was in school and also working and once the respondent qualifies he would be earning 25,000 pounds per year. She testified that her expenses per month was 1000 pounds and urged the court to order the respondent to give 40% of the said amount.
7. The petitioner's evidence was not challenged. The petitioner has raised various grounds; cruelty, desertion and adultery. It is evident that the marriage has irretrievably broken down and there is no possibility of reconciliation. Section 8 of the Matrimonial Act (now repealed) outlines grounds of divorce. Some of the grounds are cruelty, desertion and adultery. The Marriage Act 2014 at Section 66 outlines the grounds for dissolution of a marriage, amongst them being desertion by a spouse for at least three. The respondent left the matrimonial home and has since then stayed away thus deserted the petitioner. Cruelty too has been proved as the petitioner was subjected to emotional distress at the time she lived with the respondent. The petitioner has in no way condoned the respondent's cruelty nor presented the petition in collusion with the Respondent. This court therefore dissolves the marriage between the Petitioner and the Respondent celebrated on the 29th September 2007.
8. On the issue of alimony and maintenance, Section 25 of the Matrimonial Causes Act provides as follows with regard to alimony:-

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

(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 to the conduct of the parties, the court may deem to be reasonable.

(3) In any such case as aforesaid the court may, if 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 it 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.

(4) Where any decree for restitution of conjugal rights or judicial separation is made on the application of the wife, the court may make such order for alimony as the court thinks just.

(5) In all cases where the court makes an order for alimony, the court may direct the alimony to be paid either to the wife or to a trustee approved by the court on her behalf, and may impose such terms or restrictions as the court thinks expedient, and may from time to time appoint a new trustee if for any reason it appears to the court expedient to do so.”

Granting alimony is discretionary however the same should be guided by the provided law and prevailing circumstances of each case. The purpose of an award of alimony is to provide temporary support to a spouse. The petitioner herein has sought maintenance. She testified that her monthly expenditure is estimated at 1000 pounds. In her testimony stated that she works as a nurse while the respondent is studying and working part time. She however failed to disclose what she or the respondent were currently earning or reasons she needed maintenance. In the case of **W.M.M V B.M.L[2012]eKLR**, it was held that *“In considering a claim for maintenance, regard must be had to the provisions of Article 45 (3) of the Constitution of Kenya which recognizes that “parties to a marriage are entitled to equal rights at the time of the marriage, during marriage and at the dissolution of the marriage”. No spouse who is capable of earning should be allowed to shirk his or her responsibility to support himself or herself or turn the other spouse into a beast of burden but where a spouse deserves to be paid maintenance in the event of divorce or separation the law must be enforced to ensure that a deserving spouse enjoys spousal support so as to maintain the standard of life he or she was used to before separation or divorce.”*

9. As such I find that the petitioner has not proved her claim for maintenance. A decree nisi to issue forthwith and to made absolute within 30 days. No orders as to cost. It is so ordered.

Dated, signed and delivered this 26th day of February 2015.

R. E OUGO

JUDGE

In the presence of:

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

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

Mr. Makori Court Clerk