



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
FAMILY DIVISION
DIVORCE CAUSE NO.189 OF 2014

G H P S.....PETITIONER

VERSUS

K M N.....RESPONDENT

JUDGMENT

1. The petitioner, a French citizen, and the respondent, a Kenyan Citizen, underwent a marriage ceremony conducted by the Registrar of Marriages on 25th July 2009 at [particulars withheld] in Nairobi within Kenya. The petitioner is a humanitarian worker based in Nairobi and resides at [particulars withheld] estate while the respondent is a lawyer residing at [particulars withheld] in Nairobi. The marriage is blessed with two children.

2. The petition was filed on 15th September 2014 seeking the dissolution of marriage on the ground of cruelty. The parties agreed to adopt their respective pleadings and witness statements as their evidence in court. The court ordered both parties to file and serve their respective affidavits of means as well as their written submissions on the issue of alimony.

3. It is the petitioner's case that the respondent has treated him with cruelty since the celebration of the marriage. He gave the particulars of cruelty as discussing personal issues regarding their marriage life with petitioner's colleagues thus causing him embarrassment at work; reaching out to the petitioner's sisters while alleging that the marriage to the petitioner was unbearable; calling a radio station and alleging that the petitioner was abusing her; demanding that the petitioner avail luxuries despite knowing very well his limited earnings; taking a car loan despite knowledge of a strained family budget; demanding that the petitioner maintains an image of high cost living while the petitioner was struggling to make ends meet and generally living beyond her means so as to impress her friends; and threatening the petitioner with deportation since he is a French national thus causing him a lot of mental anguish and suffering. As a result of this cruelty, the petitioner suffered from depression and left the country for Canada to try to reinvent himself. Further, that this cruelty drove the petitioner away from the matrimonial home and the parties ceased cohabiting in March 2012. It is for these reasons that he prays that the marriage be dissolved and he be granted costs of the petition.

4. The respondent in answer to the petition denied committing any acts of cruelty as alleged by the petitioner and stated that it is the petitioner who moved out of the matrimonial home and abandoned her and the children. In her cross-petition, she stated that the petitioner had since the celebration of the marriage treated her with cruelty and also guilty of adultery by having an extra-marital affair with one J

W. Further, that the petitioner always wanted her to be a stay at home mother while she was content with being a career woman and being able to balance both work and family. She also stated that the petitioner had abused her both physically and verbally in the presence of their house help and neighbours thus causing her embarrassment. She said that the petitioner had anger issues, was addicted to pornography and had stopped supporting the family financially forcing the respondent to sell the family motor vehicle to make ends meet. She stated that the marriage had irretrievably broken down and all attempts at reconciliation have been thwarted by the petitioner and prayed that the same be dissolved. She further prayed that the petitioner be ordered to purchase and provide a family car for use by the respondent and the children for their transport needs as well as pay Kshs.500,000/= as alimony to enable her and the children lead the life they were accustomed to during the subsistence of the marriage.

5. The petitioner sought divorce on the ground of cruelty and the respondent cross-petitioned for divorce on the grounds of cruelty and adultery. Neither party cross-examined the other. I find that each party was cruel to the other, and that the respondent committed adultery while in the marriage. On the basis of the material before me I find that the marriage between the petitioner and the respondent has broken down beyond repair. I order the dissolution of the marriage. *Decree nisi* shall issue, and shall become absolute after 30 days.

6. Both parties filed their submissions on the issue of alimony. The respondent submitted that the petitioner should be ordered to pay Kshs.500,000 per month to enable her and the children live the life they were accustomed to prior to his desertion of the matrimonial home and abandonment of his spousal and parental responsibility. The petitioner on the other hand submitted that there are no express provisions in the **Marriage Act, 2014** for the determination of maintenance to be paid to a spouse and that it is the court's discretion to decide on the same based on certain laid down principles. One of them is that alimony should only be granted where one spouse has total reliance and dependence on a former spouse, which is not the case herein. In his affidavit of means, the petitioner averred that in the period preceding the divorce and claim for alimony, he was working under a contract where he earned a net monthly salary of 2,100 Euros (equivalent of Kshs.231,000/= per month) and that the contract has since come to an end. Further, that in his employment history, there has been occasions where the petitioner found himself in between jobs due in the nature of the short contracts; that he has no pension and has no secure long term source of income. He tabulated his monthly expenses to be Kshs.219,300/=, of which Kshs.126,300/= goes to the family and especially the children while his own personal expenses total Kshs.93,000/=. Lastly, it was submitted that the respondent does not fit the principles laid down for an order of maintenance as set out in the **RPM-V- PKM [2015] eKLR** case.

7. The concept of maintenance or alimony payment provides a means for a spouse who was financially dependent on the other spouse to support themselves either before or after the dissolution of marriage. **Section 77(1) of the Marriage Act, 2014** provides that;

“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”

The concept, though having originated from English common law, has been incorporated into Kenyan law by statute and by judicial precedent. It seeks to protect the formerly dependent spouse from the adverse consequences of the breakdown of marriage before they acquire self-sufficiency. The court shall have regard to the existing or prospective means of each of the parties, their respective earning capacities, financial needs and obligations, the duration of the marriage, the conduct of the parties prior to the divorce, their conduct that led to the breakage of the marriage. Lastly, it must be remembered that the petitioner and the respondent are equal before the law. They have equal rights and obligations.

8. I have carefully perused each party's affidavit of means as well as other documents tendered in support. The petitioner deposed that he currently spends Kshs.126,300/= towards the upkeep and maintenance of their two children in the custody of the respondent. He gave the breakdown of the expenses. They include a monthly maintenance of Kshs.70,000/= for the minors as ordered by the Children Court in Case No. 1780 of 2013, school fees, medical insurance and other related expenses of their children. The respondent is a lawyer who works for [particulars withheld]. Her gross salary is Kshs.126,900/=. After deductions she gets Kshs.90,387/= net. She is servicing a loan she used to buy a vehicle. The vehicle was carjacked. This is why she wants the petitioner to buy her a vehicle. She outlined her monthly expenses that include rent of Kshs.70,000/=: food shopping of Kshs.20,000/=: entertainment of Kshs.15,000/=: cab hire of Kshs.10,000/=: water and electricity of Kshs.7,000/=. The petitioner's case was that he is the one who caters for fees, water and electricity bills, transport costs, rent, maintenance, medical and recreation for the children.

9. It is now well accepted that:-

“ ...No spouse who is capable of earning should be allowed to shirk 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. The financial capacity of the spouses has to be examined before the court makes a finding as to whether a spouse should pay maintenance and if so how much.” (WMM-V-BML (2012) eKLR.

10. Having taken into consideration the parties financial capacity as well as their current responsibilities, I find the respondent's prayer for alimony is unmerited and dismiss the same. In arriving at this decision, I have considered that the respondent is in employment and earns a reasonable income and as such is capable of maintaining herself as well as contribute to the maintenance of the issues of their marriage. I have considered that at the end of the day the petitioner has only Kshs.93,000/= to take care of himself. I also note he has duly complied with the maintenance order that was issued by the Children Court and continues to pay the same on a monthly basis as well as other expenses related to their two children. To order him to pay alimony as prayed for by the respondent would be to burden him unnecessarily.

11. This is a family dispute and therefore each party shall bear own costs.

DATED and DELIVERED this 17th day of September 2015

A.O. MUCHELULE

JUDGE