



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
DIVORCE CAUSE NO. 3 OF 2014

I M K.....PETITIONER

VERSUS

R M N.....RESPONDENT

JUDGMENT

1. The petitioner I K through a petition dated 24th March, 2014 sued the respondent R M N seeking dissolution of the marriage solemnized between herself and the respondent, custody of the issues of the marriage with costs of the petition.
2. The respondent was served with the petition, notice to appear on 30th March 2014 by the court process server one Joseph Kithinji Kiambati at his station of work Langata Police Station, Nairobi. He accepted service but declined to sign the back of the original copy. The respondent at the time of service was identified to the process server by the petitioner who had accompanied the process server at the time of service.
3. The petitioner subsequently filed chamber summons dated 16th July 2014 seeking directions that pleadings, were in compliance and the suit was ready for hearing. The Deputy Registrar gave direction on 4th March 2015 that pleadings were in order and that the petition could proceed as undefended by way of oral evidence before a judge for a day at Meru.
4. On 23rd June 2015 the petitioner gave evidence and called no witness. The petitioner's unchallenged testimony is that she comes from Maara sub-county, in Tharaka Nithi County and that she is a police officer attached to [particulars withheld]. That the respondent is her husband having married on 20th September 2014 at District Commissioner's offices, Kisii, as per Marriage certificate no. [particulars withheld] exhibit P1.
5. The petitioner testified that the two cohabited together as man and wife at Nkubu Police station, Meru County and were blessed with two children namely "SM1" a girl born on 4th June 2001 and "SM2" born on 23rd December 2006. That the petitioner has all the time been the only parent staying with "SM1" and "SM2".
6. The petitioner contended that the respondent had been guilty of matrimonial offence of cruelty and adultery. The petitioner stated that the respondent was cruel to her in that he could not allow her to meet him without prior appointment and when she would then proceed to visit him without appointment or notice she would find another lady at the house. She alluded to the fact that the respondent was

committing adultery with the lady and out of this adulterous association between the respondent and the lady they had a child. That forced the petitioner to move out of the matrimonial home on 28th December 2006. She gave the name of the other lady as Susan and that since she left the matrimonial home she testified that her husband has never reconciled with her or approached her.

7. The petitioner prayed for dissolution of the marriage and for the custody of the children. She urged that the respondent has never seen baby “SM2” born on 23rd December 2006 and that he saw the first born baby “SM1” in the year 2006 nor does he call and ask about their welfare; that he does not support the children and the children do not know the respondent.

8. I have carefully considered the pleadings and the petitioner’s oral evidence in support of the petition, the issues for determination can be summarized as follows:-

(a) whether the petitioner proved the matrimonial offence of cruelty and adultery as pleaded and is she entitled to prayer for dissolution of marriage and custody of the children.

(b) Is the petitioner entitled to costs?

9. The petitioner in her evidence gave details of cruelty and adultery on part of her husband. She averred that her husband had barred her from visiting him without prior appointment and whenever she would do so without prior arrangement she would find the lady Susan at her husband’s house. She also testified that lady, Susan was committing adultery with her husband and out of their adulterous association they got a child.

10. The petitioner’s evidence on cruelty and adultery has not been challenged; that because of the respondent’s adulterous activities and cruelty the petitioner moved from matrimonial home close to nine (9) years ago.

11. It is my finding that the petitioner has on a balance of probability proved that the respondent is guilty of adultery and cruelty.

12. The petitioner has not returned back to the respondent’s home since she left on 28th December, 2006 a period of over nine (9) years ago. She has never met her husband since then. I am therefore satisfied that this petition has not been brought in collusion with the respondent and that the petitioner has not condoned the matrimonial offences of cruelty and adultery.

13. The petitioner has given evidence that the respondent has not seen the children since 2006. The first child “SM1” is now 14 years whereas “SM2” is about nine years. The petitioner has single handedly been caring for the two children and providing for them whereas the respondent has ignored his parental responsibility for over 14 years. The children do not know the respondent and being girls the father is not in my view the right person to have custody of the two minors; that by his conduct he has demonstrated that he does not have the welfare of his children at heart and should not be allowed to have custody of the said children.

14. That I am satisfied as the petitioner and respondent ceased to cohabit together as man and wife since 28th December 2006, a period of close to nine (9) years ago there is no likelihood of their marriage being repaired. I am satisfied that the marriage has broken beyond repair and the best that can happen to that marriage is for it to be dissolved.

15. The upshot is that the petitioner has satisfied this court that the respondent has committed matrimonial offence of cruelty and adultery and that she is entitled to prayers sought. I therefore enter judgment in favour of the petitioner as follows:-

(a) That the marriage solemnized between the petitioner and the respondent be dissolved; decree nisi do issue forthwith and decree absolute do issue within three (3) months from

today without there being necessity to apply.

(b) The petitioner is granted custody of the issues of the marriage namely baby “SM1” and “SM2” in this cause.

(c) The petitioner did not ask for costs consequently there shall be no orders as to costs.

DATED at Meru this 17th day of September, 2015.

J.A. MAKAU

JUDGE

17.9.2015

Delivered in the presence of:

Mr. Kimathi Kiara for the petitioner

No appearance for the respondent

Court clerks – Faith/Ibrahim

R.V.P. WENDOH

JUDGE

17.9.2015