



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAKURU

DIVORCE CASE NO.1 OF 2014

CCT.....PETITIONER

VERSUS

FN.....RESPONDENT

JUDGMENT

1. By way of a petition dated 14th January, 2014, the petitioner seeks orders that:

- (a) The marriage between the petitioner and respondent be dissolved.
- (b) The petitioner be granted care, control and custody of the issues of the marriage as the primary care giver.
- (c) The petitioner do make periodical contributions towards maintenance of the issues of the marriage herein.
- (d) That costs of the petition be provided for.

2. Despite evidence of service of a notice to appear, petition, verifying affidavit, statement, list of witnesses and list of documents, the Respondent did not enter appearance and/or file an answer to the petition.

3. Consequently, the matter was listed for hearing as an undefended cause with the petitioner being the only witness.

THE EVIDENCE

4. The Petitioner told the court that she got married to the Respondent in the year 2003. they were blessed with 3 children namely, RC, DC and JDC. She added that they had cohabited earlier before the marriage was solemnized in church.

5. The Respondent left the matrimonial home soon after the marriage, indeed in the same year (2003). He is currently married to another woman. He at one time committed adultery with their house help and got a child with her. He was cruel. At one time, he hit her on the head. He would abuse her. The last time they were together as husband and wife is in 2003. She stated that the marriage has broken down. She has not colluded with the Respondent to bring this petition.

6. The Petitioner asked the court to grant her divorce to enable her move on with life. She sought custody of the children and affirmed that she would continue taking care of them. She added that she was not asking for costs.

ANALYSIS

7. I have considered the petition and the grounds of cruelty, adultery and desertion raised thereon and the particulars given. I have put into account the evidence adduced by the Petitioner. She has testified on oath that the Respondent deserted her in 2003. She has added that the Respondent Committed adultery with a house help and got a child with her. She has testified that the Respondent now lives with another woman. It is her evidence that the Respondent at one time struck her on the head and used to abuse her. This evidence is not controverted by any other evidence, the Respondent having failed to file a response or make an appearance at the hearing.

FINDINGS

8. Based on the above analysis, it is clear that the Petitioner has ably discharged her duty to prove the grounds of cruelty, adultery and desertion pleaded in her petition. The 2 parties have not lived together since 2003 the Respondent having left the matrimonial home then. The evidence in support of the cruelty and adultery remains firm. I am satisfied that the petitioner herein has proved her case to the required degree. I enter judgment for the Petitioner in terms of prayers (a)(b) and (c) of the petition.

9. As the petitioner has waived her right to costs, I make no orders as to costs.

10. Orders accordingly.

Dated, Signed and Delivered at Nakuru this 24th day of November, 2015

A. K. NDUNGU

JUDGE