



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
DIVORCE CAUSE NO. 41 OF 2013

D P M.....PETITIONER

VERSUS

A A O.....RESPONDENT

JUDGMENT

The petitioner **D P M** filed this petition dated 11th June, 2013 seeking the dissolution of his marriage to the respondent. The respondent **A A O** having been duly served filed a reply to the petition and cross petition dated 13th September, 2013. The matter proceeded for hearing inter partes on 17th March, 2014. The petitioner who testified in court was represented by **MRS. KARIUKI** Advocate. The respondent did not appear in court but was represented by her advocate **MR. MARUTI**.

The undisputed facts of the case are that the petitioner and the respondent celebrated their marriage at the Holy Ghost Cathedral in Mombasa on 2nd January, 2010. The copy of marriage certificate serial number [Particulars withheld] which was annexed to the petition is proof of the marriage. Following the marriage the couple lived in Nairobi for about five (5) months. Thereafter the petitioner was transferred to Mombasa by his employer and the couple set up a second matrimonial in Nyali. No children were born of their union. The petitioner avers that upon his moving to Mombasa the respondent became hostile. She preferred to spend time with her friends even when he travelled to Nairobi to visit her. He states that the respondent was hostile towards his parents and his family. In early 2013 the couple separated. The petitioner avers that all attempts at a reconciliation have failed. He complains that the respondent purchased two plots of land without informing him leaving him to feel betrayed. She has denied him conjugal rights and has rebuffed his desire to have a child. He now seeks a divorce. On her part the respondent opted not to call any evidence in this matter.

The grounds upon which a divorce may be granted in Kenya are to be found in section 8(1) of the Matrimonial Causes Act, Cap 152 Laws of Kenya. Section 8(1)(c) provides that a divorce may be granted where the respondent

“(c) has since the celebration of the marriage treated the petitioner with cruelty.....”

Whilst cruelty is often thought of as physical cruelty e.g. assault, there can be actions or words which can be deemed to amount to mental or psychological cruelty against one spouse or another. A spouse can without physically assaulting his/her partner behave in such a way as to cause mental anguish and emotional pain to his/her spouse. This too is termed cruelty.

The petitioner testified that once he moved to Mombasa on a job transfer the respondent's attitude towards him changed. She became distant and uncaring preferring to spend time with her friends. He claimed that even when he made the trip to Nairobi to visit her she would be out with friends until 3.00 a.m. even on one occasion being dropped home by a strange man. For a wife to ignore the presence and company of her husband when the couple do not ordinarily reside together amounts to an uncaring and unfeeling attitude. The respondent had all the opportunity to socialize with friends when her husband was away. One would expect that when he made the effort to visit she would accord him due attention.

The petitioner cited an instant where the respondent purchased two (2) parcels of land for herself without informing or involving him. Whilst there is nothing wrong in a wife purchasing land for herself one would expect that such a major decision would be discussed and agreed upon. By taking such action behind his back it is clear the respondent was not being honest or open with her spouse. The petitioner stated that her actions made him feel betrayed. Without openness, honesty and communication it is difficult for a marriage to survive. The respondent as stated earlier chose not to call any evidence. She has not effectively challenged or refuted the allegations being made by the petitioner. The petitioner's narration of an instant when the respondent travelled to Mombasa but refused to visit his parents smacks of disrespect. Why would a wife shun her husband's relatives?

The petitioner also complained of a denial of conjugal rights. He stated that despite his stated desire to have a child, to carry on his name the respondent retorted that she was not interested in having sexual relations with him. Clearly the respondent had no desires to bear a child with her husband. Once again this allegation has not been effectively challenged. The picture that emerges is of a wife who went out of her way to belittle disrespect and ignore her husband. This kind of attitude is not conducive to a marriage and certainly caused mental anguish and pain to the petitioner. It does in my view amount to cruelty.

I have perused the reply to the petition as well as the cross petition. Though they raised pertinent points the respondent did not call any evidence in order to prove the allegations she made. The cross-petition was not prosecuted at all. Mr. Maruti informed the court that the respondent has abandoned her prayer for maintenance. It would appear that the relationship between the couple has broken down. The petitioner ought not to be compelled to remain in union with a wife who by behaviour has made it very clear that she has no use for him. I find that the ground of cruelty has been proved and I allow this petition for divorce. Decree nisi to issue to be made absolute within a period of three (3) months from today's date. No order on costs.

Dated and delivered in Mombasa this 28th day of April, 2014.

M. ODERO

JUDGE

In the presence of:

Ms. Tsuma h/b Mr. Maruti for Respondent

Ms.Kisoe h/b Ms. Ngugi for Petitioner

Court Clerk Mutisya