



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
DIVORCE CAUSE NO. 55 OF 2013

S C P.....PETITIONER

VERSUS

C K P.....RESPONDENT

JUDGMENT

The petitioner herein S C P has filed this petition seeking the following orders:

- “(a) The marriage between the petitioner and the respondent be dissolved.**
- (b) The petitioner be granted custody of the minor child and the respondent be ordered to pay maintenance for the said child.**
- (c) The respondent be ordered to pay alimony to the petitioner.**
- (d) the respondent be ordered to pay the costs of this petition.**
- (e) Any further or other relief that this Honourable Court may deem fit or just to grant to the petitioner in the circumstances.”**

The respondent despite having been properly served with the petition failed and/or declined to enter appearance or to file an Answer to Petition. The matter therefore proceeded as an undefended cause.

The petitioner testified before the court on 25th February, 2014. She told the court that she and the respondent got married to each other under Hindu Religious rites on 8th July, 2007 in the Hindu Temple in Mombasa. The petitioner has produced the original copy of her marriage certificate serial No. [Particulars withheld] as proof of the marriage. Following the marriage the couple began to cohabit as man and wife in Tononoka. Their union was blessed with one child a daughter named S P who was born on 12th October, 2008. The petitioner alleges that during the course of the marriage the respondent has been a cruel, uncaring and irresponsible spouse. He spent most of his time and money indulging in miraa and alcohol and is addicted to gambling. This meant that the petitioner who held a job at the Kenya Bay Beach Hotel had to single handedly cater for all the needs of the family. It is for this reason that the petitioner now seeks a divorce.

Section 6(1) of the Matrimonial Causes Act, Cap 152, Laws of Kenya provides that

“6(1) No petition for divorce shall be presented to the court unless at the date of the presentation of the petition three years have passed since the date of marriage.”

In this case the couple solemnized their marriage in July, 2007. The present petition was filed in July, 2013 a full six (6) years later. This petition therefore complies with section 6(1) and is properly before the court.

The petitioner has accused her spouse of cruelty. This is one of the grounds which under section 8(1)(c) upon which a divorce maybe granted. The petitioner has narrated how the respondent would spend all his earnings on miraa and alcohol. He was addicted to gambling and would be away from the home all night in casino's indulging this addiction. The petitioner had to cater for the costs of delivery of the couple's first child. She paid all the household and utility bills as well as school fees for the child. The petitioner has annexed receipts as proof of this **Pexb3**. As if this were not enough, the respondent would also steal her money and confiscate her ATM cards in order to get money to feed his addiction. The petitioner narrated one occasion when the respondent conned her out of a sum of Kshs. 300,000/= claiming that he was going to purchase a vehicle for the family which vehicle never materialized. He was physically and emotionally unavailable for both his wife and child. Unable to withstand the situation any longer and the stress it was causing her the petitioner returned to her parents' home in February, 2012. She reported the matter to their Hindu Community elders who called a meeting to discuss their problems. At the meeting the respondent promised to change his ways but did not do so.

The evidence of the petitioner remains unchallenged and uncontroverted. The respondent chose to make no answer to the petition. **PW2 A B** told the court that he has known the respondent for over 12 years and that he was even the best man at their wedding. He described the respondent as a very immature man. **PW2** corroborates the testimony of the petitioner and confirms that the respondent was financially irresponsible. **PW2** states that he would often find the respondent late at night in bars and/or casinos. He states that despite the petitioner's best efforts she was not able to keep the marriage going on her own.

The picture this court gets is of a young man who is unable to handle the responsibilities and the realities of married life. For a man to fritter away all his earnings on alcohol and gambling and to leave his newly married wife to shoulder the financial burden of running the home upto and including maternity bills for their first born child does amount to cruelty. The petitioner narrated how the whole situation left her stressed and unable to cope. The couple have now lived apart since 2012. The behaviour of the respondent was uncaring and he did not seem to be bothered to rectify the situation. I am satisfied that the ground of cruelty has been proved and I do grant this petition for divorce. Decree nisi to issue to be made absolute within three (3) months of today's date. The petitioner made a prayer for alimony but did not canvass the same at all in her evidence. As such I decline to make orders on alimony.

The petitioner also prayed to be awarded custody and maintenance for the child of the marriage. These are prayers which ought to be heard in the Children's Court at the first instance. The child currently lives with the petitioner and her family. I direct that the status quo remain pending any further orders from the Children Court. This being a family matter, I make no order on costs.

Dated and delivered in Mombasa this 2nd day of April, 2014.

M. ODERO

JUDGE

In the presence of:

Ms.Osino h/b Ms. Okata

Court Clerk Mutisya