



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

DIVORCE CAUSE NO. 7 OF 2013

JWM.....PETITIONER

VERSUS

JMI.....RESPONDENT

JUDGMENT

By a petition dated 17th September, 2013, the petitioner petitioned this court for the dissolution of the marriage between her and the respondent; she also sought for the costs of the petition. The petition is supported by an affidavit sworn by the petitioner on 17th September, 2013.

According to the petitioner, she married the respondent on 23rd June, 2006; initially the marriage was under Kikuyu customary law but later on it converted into a statutory marriage and the requisite certificate issued to that effect.

Since their marriage, the petitioner and the respondent lived and cohabited together in Murang'a County in the Republic of Kenya until the month of August 2006 when the petitioner left for the United States of America.

There was only one issue of the marriage though at the time the parties married, the petitioner had a child of her own who, however, had been accepted by the respondent as his own child. The two children were named as KW aged 20 years as of September 2013 and HK aged 14 years as of the same date.

Both the petitioner and the respondent were teachers by profession, employed by the Teachers' Service Commission though at the time of filing this petition, the petitioner was pursuing further studies in the United State of America.

The petitioner's complaint against the respondent is that since the celebration of their marriage and more particularly in the year 1999, the respondent had subjected the petitioner to cruelty. According to the particulars of cruelty itemised in the petition, on diverse dates between September, 1999 and 2007, the respondent had assaulted and battered the petitioner.

The petitioner has also alleged that the respondent is a perpetual drunkard which condition has led him to lose his job thereby making their life together as husband and wife even more miserable. The respondent is also alleged to have abdicated his parental responsibilities and declined to cater for the maintenance and upkeep of his children.

In the Petitioner's assessment, her marriage to the respondent has irretrievably broken down and the only option available to her now is to have it dissolved.

She has pleaded that no such proceedings have been held between her and the respondent before and that she has not condoned to the respondent's cruelty; neither has this petition been presented or prosecuted in collusion with the respondent.

Although there is evidence on record that the respondent was duly served with the petition, the respondent never entered appearance within the time prescribed in the notice for him to make such appearance or at all. He also did not respond to the petition.

The petition was therefore unopposed and was set down for hearing under these circumstances.

In her evidence in court, the petitioner reiterated what she averred in the petition. Apart from the battering and assaults she had been subjected to, the petitioner testified that sometimes in 2007 when she came back from the United States of America to pursue the visa for the respondent and the children to join her in America, the respondent threatened to kill her. His conduct demonstrated that he was not eager to join her in the America. On one occasion he went to the United States embassy while drunk; he was unable to competently participate in the interview for the visa and was sent away without the visa.

The petitioner also testified that while she was in America, she would send money for the children's upkeep but the respondent would drink it all.

It is the petitioner's case that the marriage has irretrievably broken down and beyond salvage.

As noted the petition was not opposed and for whatever reason the respondent was not interested in participating in these proceedings. In the absence of any response to the petition and in the absence any challenge to the petitioner's testimony, this court has no basis upon which to doubt the petitioner's testimony. I will take it that all that the petitioner has said in support of her petition is the truth. That being the case I am satisfied that the petitioner has proved to the required standard that the respondent is cruel and as such their marriage can no longer be sustained.

I will in the circumstances allow the petition and grant the divorce; I direct that the decree nisi do issue forthwith and the same be made absolute within thirty days of the date hereof. The costs of the petition shall be in the cause.

Dated, signed and delivered in open court this 23rd day of September, 2014

Ngaah Jairus

JUDGE