



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
DIVORCE CAUSE NO.7 OF 2013

KKKPETITIONER

VERSUS

MNORESPONDENT

JUDGMENT

1. The petitioner herein, KKK filed his petition for divorce on the 23rd May 2013 in which he highlights the following information regarding his marriage with the respondent herein, MNO -

- *he resides in Wajir County where he works as a District Officer;*
- *the respondent is a resident of Borabu District and works as an Administration Police Officer;*
- *the petitioner and the respondent contracted a marriage on 11th July 2008 at the District Commissioner's Office in the Kisii Central District as per copy of certificate of marriage exhibited to the petition and marked "KKK -1".*

2. The petitioner alleges that during the subsistence of his marriage with the respondent, the respondent treated him with utmost cruelty; the particulars thereof being the following:-

- a. That right from the celebration of the marriage, the respondent has been verbally abusive and disrespectful to the petitioner in unprintable obscene words causing him undue stress and trauma;*
- b. That the respondent has ungovernable temper and creates pointless quarrels in the home thus causing the petitioner to suffer psychological stress;*
- c. That the respondent has had no respect to the petitioner's parent and related to her with a lot of hostility;*
- d. That the respondent has denied the petitioner his conjugal rights.*

3. The petitioner further alleges that during the subsistence of the marriage, the respondent has been guilty of adultery, the particulars being:-

- i. That during the subsistence of the marriage, the respondent had adulterous relations with several men known and unknown to the petitioner, which was a source of conflict in the marriage;*
- ii. That the respondent is presently living and committing adultery with one JN and the respondent has had three pregnancies outside her matrimonial relationship and is currently pregnant while living with the said JN.*

4. It is the petitioner's case that the marriage between himself and the respondent is irretrievably broken

down and that he has neither condoned nor been privy to the respondent's cruelty. The petitioner also says that he has not instituted the instant petition in collusion with the respondent. The petitioner therefore prays for orders:-

- i. *That the marriage between the petitioner and the respondent be dissolved;*
- ii. *That the respondent bears the costs of this cause.*

5. The respondent filed her reply to petition through the firm of M/s C.O. Nyamwange & Co. Advocates. In her reply, the respondent denies in toto each and every allegation of cruelty and adultery contained in the petition and challenges the petitioner to prove the same. The respondent also denies that she is presently living with and committing adultery with one JN and that she has had pregnancies outside her matrimonial relationship. The respondent therefore prays that the petitioner's petition be dismissed with costs.

6. The matter came up for hearing on 8th July 2014. The respondent who was duly served did not appear to testify. The hearing thus proceeded ex parte.

7. The petitioner testified as PW1 and told the court that he works with the Ministry of Internal Security as Assistant County Commission in Wajir County where he is attached to the County Commissioner's Office. That he married the respondent in 2008 at the District Commissioner's Office in Kisii Central District. That there are no children between him and the respondent though the respondent had a miscarriage of their first child. That they separated in 2011 for reasons of cruelty and adultery as set out in the petition. That on many occasions during the subsistence of the marriage, the respondent spent nights outside the matrimonial home committing adultery with persons both known and unknown to him. That the respondent received text messages on her phone from the person she was committing adultery with.

8. The petitioner also testified that the respondent was extremely cruel to him: that whenever he came home from work in Habaswein, the respondent could not cook for him, nor could she share a meal with him after she cooked the food. That the respondent did not respect the petitioner.

9. The petitioner also testified that from 2011, he and the respondent have never been in contact since the respondent lives with another man with whom she has had four pregnancies, three of which have ended in miscarriages.

10. The petitioner further testified that in 2011, the respondent filed for divorce at the Chief Magistrate's Court Kisii vide cause No.17 of 2011, though the same was later withdrawn. He went further to state that the dowry which he paid for the respondent has since been returned to his parents. He asked the court to declare the marriage as irretrievably broken down and to dissolve the same with costs to himself. He told the court that he brought the petition in good faith.

11. As noted earlier in this judgment, the respondent who is represented by counsel and who was duly served did not attend court to give her side of the story.

12. I have now carefully considered the evidence that is on record as presented by the Petitioner and the issue that arises for determination is whether from the said evidence, this court is satisfied that the marriage between the petitioner and the respondent can no longer hold. In my considered view, it is clear that there is no longer any marital relationship between the petitioner and the respondent. The evidence clearly shows that the respondent is living with another man with whom she has had four pregnancies, in addition to having liaison with other men. There is also evidence that the respondent has been cruel to the petitioner by refusing to cook for him or even to share a meal with him whenever she cooks the food. There is also evidence that since January 2011, the respondent has denied the petitioner his conjugal rights. There is more than ample evidence on record to show that the respondent herein has indeed deprived the petitioner of his conjugal rights, one because since January 2011, the two have never had any contact between them and two because the respondent obviously has been granting such right to one JN as a result of which there have been four pregnancies.

13. For the above reasons, I am satisfied that the petitioner has proved his case against the respondent on a balance of probability. The marriage between the petitioner and the respondent be and is hereby dissolved.

14. As to costs, it is the considered view of this court that due to the extremely bad blood between the petitioner and the respondent, it is in the best interest of the petitioner that each party bears its own costs. It is so ordered.

Delivered, dated and signed at Kisii this 29th day of October, 2014

R.N. SITATI

JUDGE

In the presence of:-

Mr. Meme (absent) but peittioner P.I.P. for the Petitioner

N/A for the Respondent

Mr. Bibu - Court Assistant