



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 141 OF 2009

F. M. K.....PETITIONER

VERSUS

S. W.....RESPONDENT

JUDGMENT

1. F. M. K the Petitioner filed a petition on 25/9/2009 seeking the marriage between him and the Respondent S. W be dissolved and that the Court declares the marriage has irretrievably broken down, the custody care and control of the child of the marriage be granted to the Petitioner.

A declaration that the Petitioner is no longer bound to cohabit with the Respondent or maintain the Respondent. The Court to grant further other order or relief the Court may deem fit just and expedient.

2. The Petitioner F. M. K averred that on 7/4/2006 he and the Respondent solemnized a civil marriage at the Registrar's Office and were issued with a marriage certificate No. **[Particulars withheld]**.

3. The Marriage between the Petitioner and the Respondent was blessed with one (1) child/issue of the marriage A. M. K born on 20/3/2007 aged seven (7) years respectively.

4. The couple cohabited in Nairobi at Magnolia Estate, Kitisuru, and House Number **[particulars withheld]**.

5. According to the Petitioner F. M.K, during the subsistence of the marriage, the Respondent S. W treated the Petitioner with cruelty; she denied him companionship, kept away from the matrimonial home and came home in the early hours of the morning. The Respondent embarrassed and belittled the Petitioner's self esteem by telling him he was too old and did not satisfy her sexually and she could obtain sex at the snap of her fingers. The Respondent neglected the household duties and was away from home. When at home she slept nursing hangovers. The Respondent led a wild, reckless and irresponsible life engaging in confrontations with the Petitioner.

6. The Petitioner also alluded to the Respondent committing adultery during the marriage as particularized in paragraph seven (7) of the petition. The Respondent engaged in unethical acts and lesbianism and exposed the child of the marriage to these acts.

7. The Petitioner testified in Court on 2/10/2014 and stated that due to the issues outlined in the petition; the marriage had irretrievably broken down due to irreconcilable differences.

8. The Petitioner in his oral evidence to the Court stated he had opened a beauty shop at Village Market for the Respondent. The landlord called him and warned that if the Respondent did not desist from

misconduct, the Village Market would shut down their business. The business was closed in 2009. The Respondent is now running a successful business and may take care of herself.

9. The Respondent filed an Answer to the petition and Cross Petition on 19/1/2010. In the Answer to the Petitioner the Respondent denied the contents of the petition and put the Petitioner on strict proof thereof. In the Cross petition the Respondent alluded to acts of adultery and cruelty by the Petitioner on her.

10. The Respondent stated the Petitioner was violent, locked her out of the matrimonial home and the workers were given preferential treatment with access in and out as well as use of the matrimonial home.

11. The Respondent stated the Petitioner assaulted her and sent her and the child for a trip to prevent her from presenting criminal charges against him.

12. The Respondent stated the Petitioner took away the car she used and forced her to hire taxis to go home and take care of the child at school and instead gave a car to the bodyguard to trail and harass her.

13. The Respondent stated the Petitioner frequently visited Koinange Street Medd House and Pavement Club to pick up prostitutes brought them home and took photographs and videos.

14. In 2008, the Respondent and child visited Miami in the U.S and the Petitioner left the Respondent and child without enough money for upkeep and maintenance.

15. On 15/8/2009, the Petitioner packed the Respondent's personal belongings from the matrimonial home and transferred them into the garage. On the same date without service or notice the Petitioner took away the child of the marriage.

16. The Respondent sought the Petitioner's petition dismissed with costs. The marriage between the Petitioner and Respondent be dissolved on account of the Petitioner's cruelty. The Petitioner to provide reasonable maintenance and /or alimony to the Respondent. The costs of the petition and Cross Petition be granted to the Respondent

17. The Petitioner field a reply to answer to petition and Cross Petition on 16/2/2010. The Petitioner denied the allegations in the Cross Petition and claimed the Respondent fabricated issues in an attempt to scandalize the Petitioner and sought the Cross Petition be struck out with costs.

18. The Respondent in the oral testimony in Court on 2/10/2014 told the Court that the Petitioner and her married in 2006 and had the child of the marriage and separated in 2009.

19. The Respondent met the Petitioner when she was 19 years, they got married. The Petitioner opened a business shop for her at Village Market and she used the proceeds to open a second shop. She banked the proceeds in their account.

20. The Respondent was sent away from the matrimonial home and the child was kidnapped and she ended up in prison. She wishes the marriage is dissolved. The Court should consider reasonable maintenance/ alimony of Ksh 200,000/= to help her have decent place (s) to see and spend time with her child on visitation while in Nairobi as she lives in Watamu.

21. In cross examination by the Petitioner's lawyer she confirmed to the Court that she is in the process of construction of a business premises. She is in charge of the construction, after she was lent Ksh. 1.5million by a friend to refund when the business starts.

22. This Court has considered the pleadings filed and oral evidence adduced by the Petitioner and Respondent. They have confirmed to the Court that there has been various cases; Children

Case 513 of 2009 on custody of the child of the marriage and the issue is resolved and H.C Civil case number 17 of 2009 in relation to access to the matrimonial home where the issue is resolved.

Therefore the issues before this Court related to the dissolution of the civil marriage between the Petitioner and Respondent and the issue of maintenance/alimony of the respondent by the Petitioner.

23. From the evidence, it is clear that the Petitioner in the petition is relying on 2 grounds of divorce namely; cruelty and adultery. Conversely the Respondent also relies on two (2) grounds of divorce in the Cross petition adultery and cruelty. Each party has cast aspersions on the other and the acrimony is palpable; the effect having that the marriage has irretrievably broken down. The Petitioner gave detailed accounts of instances of adultery and unnatural conduct and pleaded to have video recordings. The Respondent claimed that the Respondent indulged with prostitutes and also claimed to have video recordings too. With such grave aspersions cast at each other, these actions have adversely affected each party and they are emotionally traumatized.

24. From the evidence, the Petitioner had stated particulars of cruelty, lack of respect, non availability of the Petitioner, reckless conduct, staying away most of the nights till morning, unable to conduct herself as a wife, participate in household duties and be with the family. The Respondent claimed, she was deprived of food, money, motor vehicle, followed around and physically assaulted. Cruelty is very broad and encompasses both physical and emotional cruelty on each of the parties. In the assessment of the evidence adduced by the parties the Court finds it discloses and confirms cruelty to each party by each party.

25. Under Section 66 of the Marriage Act 2014, grounds for dissolution of civil marriage include adultery, cruelty, exceptional depravity, desertion and irretrievably breakdown of the marriage. The petitioner and Respondent have proved three (3) of the grounds, adultery, cruelty and irretrievable breakdown of their marriage on the part of each other.

26. The Petitioner and Respondent have been separated for five (5) years and have had no contact, therefore attempts at reconciliation are minimal. Each party confirms that they have not connived, colluded to bring the matter to Court.

27. In the premises therefore, the Court holds that the Petitioner has established his case against the Respondent and the Respondent has proved her case against the Petitioner. The Court upholds both the Petition and the Cross petition.

28. The Court therefore orders as follows;

- a) The marriage between the Petitioner and Respondent solemnized on 7/4/2006 is hereby dissolved.
- b) Decree nisi to issue and in thirty (30) days decree absolute to issue.
- c) The issue of the child of the marriage has been the subject of Children Court Case Number 513 of 2009 where custody is with the Petitioner and the Respondent to have visitation rights.
- d) The Respondent sought reasonable payment to have a decent place to see the child at and to cater for him. Ksh 50,000/= a month is awarded until the parties file affidavit of means and the Court on application of parties determine alimony.
- e) **In the case of W. M. M Vs B. M. L. H.C. Divorce Cause No. 179 of 2009.** The Supreme Court of Kenya Observed;

In a claim of maintainance following dissolution of marriage, it should consider the nature of factors that determine whether a party would be entitled to maintenance.

Article 45(3) of the Constitution that recognizes parties to a marriage are entitled to equal rights, at the time of marriage, during marriage and after marriage. Each spouse should enjoy equal rights to property and personal freedom and equal treatment without discrimination on the basis of gender.

f) Each party to bear its own costs.

READ AND SIGNED at NAIROBI THIS 27TH DAY OF OCTOBER, 2014

MARGARET MUIGAI

JUDGE

In the presence of:

M/s. Githinji for the Petitioner and in the absence of Counsel for the Respondent.