



IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 42B OF 2009

BETWEEN

P K M.....PETITIONER

AND

D C S.....RESPONDENT

JUDGMENT

1. Marriage was celebrated between the parties herein on 5th March 2000 at the District Commissioner's office Meru. A certificate of marriage serial number *[particulars withheld]* was issued to them in accordance with the Marriage Act. The couple thereafter cohabited at Meru and Nairobi, as husband and wife. The couple was blessed with one issue – B K.
2. The petition in this matter was filed in court on 23rd March 2009. The petitioner accuses the respondent of cruelty. The particulars of cruelty are that the respondent severally assaulted and brutalised the petitioner, has shown no respect for the petitioner in the course of the marriage, verbally abused the petitioner in public, moved out of the matrimonial home to live with her brother contrary to instructions from the petitioner, embarrassing the petitioner at his place of work by regularly abusing him in front of his employers, threatening to kill the petitioner and to strangle the child to death and thereafter killing herself, among other grounds.
3. After being served with the papers the respondent filed an answer to the petition and a cross-petition. She denies having assaulted the petitioner at all, and pleads that she has always treated him with love, tender care, affection and respect. In general, she denies all the particulars of cruelty as set out in the petition. She cross-petitions for dissolution of the marriage on the grounds of cruelty and desertion. She accuses him of using unkind and cruel language towards her, ill-talking about her to her friends neighbours and relatives, being neglectful of her needs as a spouse, showing utter contempt to her, sending her away from the matrimonial home, among others. She claims that she now suffers depression as a result. She accuses him of committing adultery with persons that she has named in the cross petition, but whom she has not cited as a co-respondents. She prays for dissolution of the marriage on the grounds set out in her cross-petition. She also prays for alimony.
4. On 2nd June 2011 the Deputy Registrar certified that the matter proceeds for hearing as a defended cause.
5. The petitioner testified on 15th May 2014 and called one witness. His testimony gave vent to the allegations made in the petition. He talked about threats that she made to kill him forcing him to

make a report of the threats to the police. He also testified about an assault on 29th November 2004 which he reported to the police. He produced a police form 3 as exhibit to support his case. She also made a similar report to the police, and tables turned when it was he who was arrested and charged with assault. He was to be acquitted when she failed to turn up in court to prosecute her case against him. He was cross-examined on his testimony. He was in my view unshaken in the cross-examination. His witness, who testified as PW2, dwelt mainly on the event when the child of the marriage was removed by the authorities from the custody of the petitioner at the behest of the respondent. He also testified on how the respondent kept leaving the matrimonial home in Marakwet. His evidence was largely unshaken on cross-examination.

6. The respondent was to testify on 16th May 2014. She got emotional before taking the oath and started shouting. The matter was then adjourned to 3rd July 2014. On the adjourned date the respondent did not show up. Her counsel then proceeded to close her case. The matter was then fixed for judgement on 10th October 2014.
7. As no counter evidence was given by the respondent, the petitioner's story was not controverted. I am satisfied from his testimony that the matrimonial offence of cruelty was established. There were threats to kill. There was concrete evidence of assault on the petitioner by the respondent and his humiliation at his place of work by the respondent.
8. It would appear to me that the marriage between the parties herein has irretrievably broken down. It would also appear to me that there has been no collusion between the petitioner and the respondent in the bringing of these proceedings. There is also no evidence that the petitioner has condoned the cruelty.
9. I am disposed to make the following orders: -
 - a. That the marriage celebrated between the petitioner and respondent on 5th March 2000 is hereby dissolved on the ground of cruelty;
 - b. That the cross-petition dated 26th October 2010 is hereby dismissed;
 - c. That decree *nisi* shall issue forthwith and shall be made absolute after sixty (60) days; and
 - d. That there will be no orders as to costs.

DATED, SIGNED and DELIVERED at NAIROBI this 24th DAY OF October 2014.

W. MUSYOKA

JUDGE