

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
FAMILY DIVISION

DIVORCE CAUSE NO. 60 OF 2011

N R O.....PETITIONER

VERSUS

J H O.....RESPONDENT

JUDGMENT

1. The petitioner is a British national and the respondent is a Kenyan national. They got married on 27th July 2002 at Somerset in the United Kingdom, and subsequently came to settle in Kenya where they set up a matrimonial home at *{particulars withheld}* in Lavington Estate of Nairobi. Following disagreement, the couple has lived apart since August 2009. The marriage was blessed with a child H N O who was born on 26th October 2005.

2. On 6th April 2011 the petitioner filed this petition seeking the dissolution of the marriage on grounds of adultery and cruelty. She sought the sole custody, care and control of the child with reasonable access to the respondent and maintenance of the child by the respondent. The respondent filed an answer to the petition in which he denied any adultery or cruelty. He cross-petitioned for divorce on the ground of cruelty. Each spouse pleaded that the marriage has irretrievably broken down. During evidence, the petitioner abandoned the prayers for the custody of the child and its maintenance.

3. The petitioner testified and was cross examined. She was represented by M/S JUDY THONGORI. The respondent gave evidence in-chief which he did not complete. The matter was adjourned severally. On 30th October 2014 when he did not turn up to complete his case the court ordered that the defence be considered as closed.

4. It was clear from the testimonies of the parties that the marriage has been difficult. Each side considers that the couple cannot live together. The marriage cannot be repaired.

5. The petitioner accused the respondent of adultery. She stated that she had seen several SMS messages in his phone. The messages were sexy and were from females. He often returned after 3.00a.m. and was no longer interested in her saying she was overweight. Lastly, she testified that she had with him found condoms and receipts for them. They were condoms that were not for their use. The respondent denied that he had any other woman in his life. On the issue of condoms, he stated that he bought a packet of them and read the literature thereon following which he threw them leaving a packet in the car. That is where, he says, she must have found it. The second time, he said, was when she left him all alone at home when he was unwell. She returned late and found him in bed. Next morning she went to her shop. He went to her shop to take her flowers. She instead threw him out of the shop. He felt compelled to look for love elsewhere. He went home and took one condom. They used condoms for family planning. He went out to look for any lady he could find. He found one at a petrol station. He gave her a bunch of flowers. They agreed to go some place to have fun. They went to Hillcrest Hotel in Westlands and took a room. They entered. When he asked for sex she refused. That is when he came back to his senses. He thanked God that she had refused. He took the condom and the hotel-room receipt home. That was how the condom was found.

6. On the allegation of cruelty, the petitioner made references to many SMS messages sent to her by the respondent. The messages were abusive. The “F” word was used in some. In others, she was referred to as a docile teacher who slept all day. He is an advocate and she is a teacher. In others he called her a blatant liar. He threatened her in others, saying she was going to meet her Waterloo. It was evident that these messages went beyond the once-in-a-while spats that are part of a marriage. They questioned the petitioner’s integrity and ability in a manner that was cruel.

7. On the other hand, the respondent alleged that the petitioner had been cruel to him for not disclosing before marriage that she had a condition that made her have panic attacks that would make her very anxious. He told the court that had he known about this condition he would not have married her. The petitioner testified that she began having this condition before marriage. She denied that she did not disclose this condition to him. Whatever is the case, it was evident that this condition was a source of constant friction in the marriage.

8. Another cause of friction in the marriage, according to the respondent, was the friendship between the petitioner and two ladies. They were G and A. The respondent did not like these ladies and made the petitioner aware of it. According to him, they were a bad influence to her. The petitioner did not testify that she was willing to sacrifice the friendship with these ladies for her marriage.

9. Lastly, it was evident from the testimony of the parties that the respondent did not like the family of the petitioner. Whenever they visited from the United Kingdom the respondent felt quite stressed and unhappy. According to him, they would accost him with questions whenever he came home to find them. They made him look insignificant. According to the petitioner, the respondent would not be directly rude to her parents but would absent himself from home. Her mother would demand that he comes home early and that would unsettle him. The respondent’s case was that the petitioner’s family was cruel to him.

10. In conclusion, the couple agreed in August 2009 to stay apart to see if the marriage would be re-worked. That has not happened. When each testified it was clear that it is over for them. It is evident that this was a cruel relationship and the parties cannot tolerate each other anymore. It is for these reasons that I allow both the petition and the cross-petition and dissolve the marriage between the petitioner and the respondent. *Decree nisi* shall issue and shall become absolute after 30 days. Each party shall pay own costs.

DATED and DELIVERED at NAIROBI this 27th November 2014

A.O. MUCHELULE

JUDGE