



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
DIVORCE CAUSE NO125 OF 2013
IN THE MATTER OF THE MARRIAGE ACT (CAP 150)
IN THE MATTER OF THE MATRIMONIAL CAUSE ACT (152)
S K S (S.K.S).....PETITIONER
VERSUS
P M K (P. M. K).....RESPONDENT

JUDGMENT

1. S K S filed a petition dated 19th June 2013. She seeks that their marriage with the Respondent P M K be dissolved. Her grounds of divorce are adultery, cruelty and desertion, particulars are set out in her petition. She seeks a permanent injunction restraining and prohibiting the Respondent entering and accessing the petitioner's property in Ngara, Dasani road and referred to as phase 11 Block **[particulars withheld]**. She also seeks to be granted the custody of the said child of the family and maintenance for herself and the said child as may be just.

2. The Respondent was served with the petition and after he failed to respond the petition was granted leave to proceed with the cause as undefended.

3. On the 9th of October 2014 the Petitioner testified as follows; that on the 4th of July 2007 she entered into a marriage with the Respondent under the Marriage Act Cap. 150 at the office of the Registrar of Marriages in Nairobi and a certificate No. **[particulars withheld]** was issued. They cohabited with the Respondent at various places in Nairobi and they have one issue namely R M who was born on the 31. 12. 2007. That during the celebration of their marriage the Respondent has committed adultery with various women. She found many love messages in the Respondent's phone. That as a result of the Respondent's behaviour she moved out of the matrimonial home in 2011 and on going back there she found that the Respondent was living with another woman. She also stated that the Respondent has treated her with cruelty by constantly staying out of the matrimonial home. That the Respondent is a man of ungoverned temper, has drunken habits, uses violence on her and abusive language. She gave instances of his violence in 2008, 2009 and 2012. That in 2012 he threaten to kill her and she reported the matter at Donholm Police post on the 10/5/12 under OB No. 36/10/05/2012. That whilst she was working out of the country she sent the Respondent money to buy a vehicle a Subaru legacy which he did not buy and never accounted for the money. That the Respondent has caused her financial miseries and has failed to meet his basic duties. That she is the one paying the mortgage for the house they stay in currently and that since October 2011 she has been forced to pay for the house and feed the family.

4. She testified that as a result of the Respondent's conduct she has suffered in her health, she has much stress and anger until her duties at her work place was affected and this caused her low esteem resulting into emotional and nervous breakdown. That she has not in any way condoned the Respondent's cruelty, adultery and desertion, neither has she presented or prosecuted this petition in collusion with the Respondent.

5. According to her the Respondent is in receipt of income of Kshs. 350,000/- per month from his occupation and has money in the bank. She also seeks that the Respondent vacates her house for her own safety and that of her child as he is a violent person. She asked the court to estimate the support she should get. She sought Kshs. 100,000/- which is a third of the Respondent's salary.

6. Counsel for the petitioner filed written submission. He reiterated her evidence as stated in the petitioners affidavit and in court. It was submitted that based on what the petitioner stated the court should dissolve the marriage. That under section 25 (2) of the Act the petitioner is entitled to maintenance. Under section 27 and 29 of the Act the court has power to grant orders in respect of the wife's property as well as protection of the said property. That section 30 of the Act provides for custody and maintenance of children and that it would be in the best interest of the child that she be placed in the custody of the petitioner. The petitioner relied on the following cases namely; **Divorce Cause No. 153 of 2009 H.D. vs. A.T (2021)eKLR, Divorce Cause No. 20 of 2009 G.K.T.vs.F.A.M(2010)eKLR and Nakuru Divorce Cause 5 of 2009 D.N.K vs. J.K.O (2010)eKLR**. Lastly it was submitted that the marriage between the petitioner and the Respondent has irretrievably broken down with no possibility to salvage the marriage

7. I have considered the evidence of the petitioner that was not challenged. From the evidence adduced the Respondent has proved her ground of cruelty. She narrated various incidents which caused her stress. The Respondent's behavior towards her left her with emotional stress which according to her led to nervous breakdown. Her evidence on the ground of adultery has not been sufficiently proved, however she has proved the ground of desertion by the Respondent. She is entitled to maintenance. I have looked at her further affidavit dated 9th of December 2014 where she particularizes what she requires as maintenance as follows;

i. Monthly pro-rated Medical Insurance for the child	Kshs. 5,000
ii. Food	Kshs. 10,000
iii. Water and Electricity	Kshs. 5,000
iv. School and Transport	Kshs. 5,000
v. School fees (Kshs. 115,000 per year)	Kshs.30,000
vi. Home clothes	Kshs. 10,000
vii. House help	Kshs. 15,000
viii. Entertainment	Kshs.10,000
ix. Miscellaneous	kshs. 10,000

Total Kshs 100,000.00

8. In her evidence in court she did not disclose what she earns. I expect her to shoulder part of the responsibility of raising the issue of the marriage. Having considered the expenses I find that a sum of Ksh.80,000/- is sufficient as maintenance if indeed the Respondent earns a sum of Kshs.350,000/- as stated. The Petitioner has proved her grounds of cruelty and desertion. The Petitioner's evidence on the Respondent's and governed temper and violence was not challenged. The marriage between the

Petitioner and Respondent has irretrievably broken down. Further she seeks the injunction to restrain the Respondent from accessing her property at Ngara because of his temper and drinking habits. She has established a prima facie case to warrant an injunctive order. I therefore dissolve the marriage between the Petitioner and the Respondent celebrated on the 4th of July 2007. The Petitioner is granted custody of the child ,with the Respondent having a right of access and maintenance for herself and the child at Kshs.80,000/-. The Respondent is restrain from entering and accessing the Petitioner's property in Ngara Dasani Road Phase II Block *[particulars withheld]*. A Decree *nisi* to issue and to be made absolute with thirty (30) hereof. No order as to costs.

Orders accordingly.

Dated signed and delivered this **19th** Day of **December 2014**.

R.E.OUGO

JUDGE

In the presence of;

.....For the Petitioner

Charity Court Clerk