



REPUBLIC OF KENYA

High Court at Mombasa

Divorce Cause 2 of 2001

C. G.....PETITIONER

VERSUS

M.W.M.....RESPONDENT

JUDGMENT

The petitioner **C.G** filed this petition dated 22nd January, 2001 in which he prays for the dissolution of his marriage to the respondent **M.W.M**. Despite having been duly served with notice of the petition the respondent failed to enter appearance or to file a reply to the petition. The matter therefore proceeded as an undefended cause.

In his evidence the petitioner told the court that he and the respondent got married at the Registrar's office in Mombasa on 3rd February, 2000. He produces their marriage certificate as an exhibit serial No. [particulars withheld]**Pexb1**. The couple had no children. After the marriage they moved to Italy where they set up their matrimonial home. However, the petitioner soon found that the respondent loved to drink and party. She later left the matrimonial home and has not returned to date. Efforts by the petitioner to seek reconciliation through pastors and family have borne no fruit.

The law on marriage and divorce is contained in the Matrimonial Causes Act Cap 152, Laws of Kenya. Section 6(1) of this Act provides:

“No petition for divorce shall be presented to the court unless at the date of the presentation of the petition three years have passed since the date of marriage.”

In this case the parties celebrated their marriage in February, 2000 and hardly one year later in January 2001 the petition was filed. However, the petitioner did on 28th November, 2000 obtain leave of the court to present his petition before the expiry of three (3) years. Therefore this petition is properly before the court.

In his evidence the petitioner told the court that the couple began to experience problems at the outset of the marriage. He states that the respondent became abusive towards him. They moved to Italy but in April, 2000 the respondent left the matrimonial home in Italy and has never returned to date. The petitioner later heard that she was living with another man in Genoa which is a town 200 km from where the two had set up their matrimonial home.

The evidence of the petitioner is not challenged in any way. This court has no reason to doubt his testimony. It is clear that a marriage cannot possibly be sustained when one partner has shown a clear indication to abandon the union by choosing to live 200 km away from the matrimonial home. The fact that the respondent was living with another man shows that she had abandoned her marriage. What exists is a shell of a marriage and even this court cannot give it life. The behaviour of the respondent does amount to cruelty. As such I do grant this divorce on the ground of cruelty. The petition is therefore allowed. Decree Nisi to issue to be made absolute after the expiry of three (3) months from today's date. No order on costs.

Dated and delivered in Mombasa this 8th day of March, 2013.

M. ODERO

JUDGE

In the presence of:
Mr. Ngure h/b Mrs. Deche
Court Clerk Mutisya