



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

DIVORCE CAUSE NO. 16 OF 2011

F W W.....PETITIONER

VERSUS

V J.....RESPONDENT

JUDGMENT

F W W the Petitioner contracted with V J a Civil Marriage at Kitale D.C.'s Office on the 30th August 2002, and lived together as husband and wife both in Kitale and Nairobi, but separated in the year 2004.

The Petitioner claims in her Petition for Divorce dated 21st October 2011 and filed on 27th October 2011 that the Respondent had been very cruel to him, and had deserted the matrimonial home.

The particulars of cruelty according to the Petition included a violent temper, insult and abuse and neglect by the Respondent, that the Respondent made domestic environment at the matrimonial home hostile and inhospitable and locking the Petitioner out of the matrimonial house, denied the Petitioner his conjugal rights.

The Petitioner also alleged that the Respondent had committed adultery with one W T and other unknown men. The Petitioner also alleged that the Respondent's violent behaviour, selfishness and cruelty has caused the Petitioner untold anxiety, stress, humiliation and mental anguish which has completely eroded the Petitioner's confidence in the Respondent and the marriage.

The Petitioner also alleged that his father attempts at reconciliation have not been successful in view of the Respondent's conduct and lack of commitment to the sanctity of the institution of marriage.

The Petitioner further contended that he had not presented the Petition in collusion with the Respondent nor had he condoned, connived and/or been an accessory to the cruelty stipulated in the Petition.

Despite service of the same Notice for the Petition, the Respondent did not attend at the hearing on 25th October 2012. There was an Affidavit of Service by one Boniface Owuode sworn on 27th February 2012. The matter therefore proceeded to hearing *ex parte* on that date.

In addition to the matters averred in the Petition, the Petitioner also clarified that after their marriage in 2002, the Respondent eloped with one of his junior officers at work, that he tried to have the issue settled amicably, and their relationship was restored. However a short time later, while he was away, the Respondent carried away all their household effects and furniture and took off with lover, a junior officer to the Petitioner while he was away on duty in Southern Sudan.

The Petitioner also testified that upon his relocation to Kenya in 2005, he made efforts to reconcile with the Respondent but in return he only received insults and in the year 2006, the Respondent informed the Petitioner that she did not care and dared the Petitioner to do whatever he thought fit.

He again returned to S. Sudan on U.N. Assignment, and upon his return in 2008, he tendered his resignation from the Armed Forces, and settled in Free Area of Nakuru then D[...] Section. He reiterated that apart from the cruelty the Respondent continued to co-habit with W T and commit adultery. For those reasons the Petitioner sought the dissolution of the marriage.

The Petitioner added further that the Respondent is attached to the Police [.....]and was not accessible, and though he had spoken to the Respondent informing her of the hearing of the Petition, she had informed him that she was not available, and that once the Petition was granted, she should be informed.

For those reasons the Petitioner prayed that the court should allow his Petition for the dissolution of his marriage with the Respondent, and that there are no issues of maintenance as the Respondent earns a higher income than he does.

In Nakuru Divorce Cause No. 3 of 2012, I had this to say about desertion and its consequences -

“... where in a marriage one partner deserts the other without any explanation at all, and does not respond to a Petition for Divorce, it is clear that such a party has no interest in the continuing existence of the marriage. It is of no use or benefit to one party in a marriage if the other party does not by action of desertion wish to honour or sustain.”

In this case, the action was desertion is complied with prior acts of cruelty and adultery and by not honouring summons to attend court disdain for the Petitioner. ***“Such a union of marriage as I said in the above cited case, “is said to have irretrievably broken down and it is only but proper to release the other party from his for her/erstwhile binding confines.”***

I am satisfied that the Petitioner has established sufficient cause for the grant of the **nisi** for the dissolution of his marriage with the Respondent.

In exercise therefore of the discretion vested in this court by Section 15 of the Matrimonial Cause Act (*Cap. 150, Laws of Kenya*), there shall issue a decree **NISI** to be made absolute after the expiration of six months for the dissolution of the Petitioner's marriage with the Respondent.

This being matters of the soul, I direct that each party shall bear the costs thereof.

There shall be orders accordingly.

Dated, signed and delivered at Nakuru this 7th day of June, 2013

M. J. ANYARA EMUKULE

JUDGE