



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

DIVORCE CAUSE NO. 6 OF 2010

IN THE MATTER OF: THE MARRIAGE ACT, CHAPTER 150, LAWS OF KENYA

AND

IN THE MATTER OF: MATRIMONIAL CAUSES ACT, CHAPTER 352, LAWS OF KENYA

BETWEEN

H. A. L. PETITIONER

VERSUS

P. L. O. RESPONDENT

JUDGMENT

1. The Petitioner herein, H. A. L. filed her petition dated 21st October 2010 on the 22nd October 2010. She prays for the following reliefs:-

a) The marriage between the Respondent and myself (Petitioner) be dissolved and a decree *nisi* do issue.

b) The Decree Nisi be confirmed within 3 months or such shorter period as the court may deem fit and expedient.

c) The custody of the children of the marriage, more particularly, the one(s) who has not attained the age of majority, be granted to the petitioner.

d) Costs of the proceedings herein be borne by the Respondent.

e) Such further and/or other orders be made as the court may deem fit and expedient.

2. The Petitioner avers that she and the Respondent got married under Kisii customs and practices on 25th September 1983. The customary

marriage was subsequently solemnized on 15th January 1997 and a Certificate of Marriage issued on even date, by the DC's office, Central Kisii District. See **P. Exhibit I**. The Petitioner also avers that there are 2 issues of the marriage, namely T.O.L. and N.M.L aged 22 and 11 years respectively. Prior to the said marriage, the Petitioner had her own three (3) children, namely R.A. aged 33 years, M.A. aged 32 years and S.O. aged 28 years as at the time of filing the Petition. It is the Petitioner's case that upon marriage, the Respondent took on her three (3) children as if they were sired by him and he treated them equally with the two (2) children of the marriage. She avers further that during the subsistence of the marriage, the Respondent herein has engaged in promiscuity, infidelity and adulterous relationships with various women and in particular with one Stella Omoke, with whom the Respondent sired one issue, B.O. Particulars of adultery are set out in paragraph 7 of the Petition.

3. The Petitioner also avers that the Respondent has since deserted the Petitioner as more specifically set out in paragraph 8 of the Petition. The Petitioner contends that her marriage with the Respondent has irretrievably broken down and various reconciliation attempts have borne no fruit. She states that she has not connived in and/or condoned the acts of adultery and desertion perpetrated by the Respondent.

4. Summons to enter appearance was duly served upon the Respondent on 26th October 2010 but he neither entered appearance nor filed answer to Petition. Consequently by the Chamber Summons dated 19th February 2011, the Petitioner asked the Deputy Registrar to issue a Registrar's Certificate in favour of the Petitioner/Applicant to enable the petition be listed before the Judge for hearing and disposal. The

application also sought the Registrar's confirmation that the pleadings/documents filed herein by the Petitioner were proper and in order and thus requiring to be placed before a Judge in accordance with **Rule 29 (1)** of the **Matrimonial Causes Rules**. The orders sought were duly granted on the 15th March 2011, thus paving the way for the hearing of this Petition on the 21st November 2011.

5. The Petitioner testified and reiterated the averments of the Petition dated 21st October 2010. She said that of all the five (5) children, N.M.L. who was born on 12th February 1998 is a Form I student at (*particulars withheld*) in Nairobi while all the other children are adults. She asked the court to dissolve the marriage since the Respondent had deserted her and was committing continuous acts of adultery and bigamy with Stella Omoke with whom he lives in America. She also asked for custody of her youngest child and costs of the suit.

6. In his final submissions, counsel for the Petitioner submitted that there was uncontroverted evidence that the Respondent was in an adulterous and bigamous relationship out of which there is a child. He submitted further that since 15th December 2008, the Petitioner and the Respondent have lived their separate lives, so that there is now no marriage that can be talked about.

7. I have now carefully considered the pleadings and the testimony of the Petitioner. The testimony of the Petitioner is not controverted, so the only question that arises is whether the Petitioner's evidence has proved her case against the Respondent on a balance of probabilities.

8. In this case, I am satisfied that the Petitioner has proved her case against the Respondent on a balance of probabilities. The Respondent is indeed living in an adulterous and bigamous relationship with another woman with whom he has sired a child. It is also on record that the Respondent deserted the Petitioner on 1^{5th} December 2008 and has never looked back.

The youngest child of the marriage, who is a Form I student (as at November 21, 2011) is with the Petitioner, and there is no evidence on record to show that the Respondent has any interest in the said child.

8. In the premises I enter judgment for the Petitioner in the following terms:-

(a) The Marriage between the Respondent and the Petitioner be and is hereby dissolved and a decree Nisi do issue in accordance with the law.

(b) The Decree Nisi may be confirmed within three (3) months or such shorter period as this court may deem fit and expedient.

(c) The custody of children of the marriage and especially N.M.L. be and is hereby granted to the Petitioner.

(d) The Respondent shall bear the costs of these proceedings.

9. It is so ordered.

Dated and delivered at Kisii this 28th day of February, 2012

RUTH NEKOYE SITATI

JUDGE.

In the presence of:

Mr. G.J. Masese for Oguttu-Mboya for Petitioner

N/A (never entered appearance) for Respondent

Mr. Bibu (present) Court Clerk

RUTH NEKOYE SITASTI

JUDGE.