



REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI MILIMANI LAW COURT
DIVORCE CAUSE 150 OF 2008

R.S.K.....PETITIONER

VERSUS

P.S.B.....RESPONDENT

JUDGMENT

By a petition dated 15th December, 2008, the Petitioner seeks from the Court orders that –

- (a) *The marriage between her and the Respondent be dissolved.*
- (b) *The custody of the 2 children of the marriage be granted to the Petitioner.*
- (c) *Alimony and maintenance for the children in the sum of Kshs.40,000/= per month be paid to the Petitioner by the Respondent.*
- (d) *The costs of this cause be awarded to the Petitioner.*

The Petitioner's case is that the Respondent is her husband. Since the celebration of the marriage, she accuses the Respondent of physically assaulting her. He frequently brandishes a knife in the house threatening to kill the Petitioner and/or himself. Consequently, he has variously stabbed himself thereby instilling fear in the Petitioner. He uses violent, demeaning and abusive language against the Petitioner in the presence of the children and the house-help. For a long time, the Petitioner failed to meet the family's financial obligations as a result of which the family at times has at times been threatened over rent arrears. Occasionally, there are no food provisions whatsoever. As a result, the Respondent has exposed the Petitioner to extreme mental cruelty and financial burden.

In addition to the cruelty, the Petitioner also avers that the Respondent has been guilty of infidelity with various women.

The Respondent filed an answer to the petition denying any acts of cruelty against the Petitioner, and further denying the allegation of infidelity. On the contrary, he avers that the Petitioner deserted the matrimonial home on or about the 2nd February, 2009, abandoning the issues of the marriage in the process. The Respondent has been taking care of the said issues to date.

The Respondent further contends that a week after leaving the matrimonial home, the person with whom the Petitioner is having an adulterous affair rented a flat for her in Parklands and bought her a vehicle. On his part, he is working very hard to save the marriage between the Petitioner and himself and believes that reconciliation is possible. However, by reason of the foregoing, it is his contention that the Petitioner is not fit for the grant of custody of the children, and therefore the custody of the children should be granted to him. He is the one who has been taking care of them since the Petitioner deserted the matrimonial home, and he is also the one paying school fees for them.

At the hearing of the petition, Mr. Kariuki held brief for Mr. Mutiso for the Petitioner while Mr. Kiura appeared for the Respondent. Mr. Kariuki told the Court that the Petitioner would seek only the prayer for divorce. On that note, the Petitioner took to the witness stand and gave sworn testimony. She testified that the Respondent was her husband, and that the parties had married at the Registrar's office, Nairobi, in September, 1993. They were issued with a Certificate of Marriage a copy of which was attached to her petition. After the marriage, the couple lived happily and were blessed with two issues, a daughter and a son.

Three years ago, however, the Respondent started beating the Petitioner, and on one such occasion, the children witnessed the beating as they were going to school in the morning. He also used to abuse her in the presence of the children and the house help. He had threatened the Petitioner with a knife and even slashed his arm with that knife. The Petitioner cannot live with him any longer and urges the Court to dissolve the marriage.

Mr. Kiura for the Respondent did not cross-examine the Petitioner, and Mr. Kariuki did not make any submissions. After considering the pleadings and the testimony adduced in Court, I find that the main issues for determination are whether the Respondent has committed the matrimonial offences of adultery and cruelty, and if so, whether the parties are entitled to a divorce.

The petition before the Court is based on the matrimonial offences of cruelty and adultery. With regard to the offence of adultery, the Petitioner confined herself to stating in her petition that the Respondent was "guilty of infidelity with various women." She did not elaborate this either in the pleadings or in her oral testimony in Court. In the circumstances, I find and hold that the allegation of adultery has not been proved in the absence of any supporting evidence.

With regard to cruelty, the Petitioner narrated how the Respondent assaulted her one morning, and how the children witnessed the assault as they were going to school. The Respondent has on occasions threatened to stab her, and how he severally stabbed himself. Such episodes are destined to send shivers down the Petitioner's spine. The message was very clear – i.e. if the Respondent could stab himself, there was nothing to prevent him from stabbing the Petitioner. Such incidents are bound to instill fear to the Petitioner, and this causes mental anguish and cruelty.

As a consequence of these misdeeds, the Petitioner has made up her mind. Her parting shot in her testimony in Court was – "I urge this Court to dissolve this marriage; I can't live with him any more." These are strong words, and they fly right in the face of the Respondent who still entertains the notion and belief that reconciliation is possible. There cannot be a reconciliation by one party alone. Both parties must be willing to reconcile. Provided that one of the parties is not ready to do so, any attempts at a reconciliation are bound to fail.

By reason of the foregoing, I find that the marriage between the parties is irretrievably broken down, and it is not possible to mend the pieces. I accordingly make the following orders –

- 1. The marriage solemnized at the Registrar's office in Nairobi between the Petitioner and the Respondent herein in September, 1993 be and is hereby dissolved.***
- 2. Decree nisi to issue.***
- 3. Decree nisi to become absolute after 90 days upon application by either of the parties.***

It is so ordered.

DATED and DELIVERED at NAIROBI this 23rd day of February, 2012.

L. NJAGI
JUDGE