



S.Y.P..... PETITIONER

VERSUS

Y.K.P..... RESPONDENT

JUDGMENT

Before the Court is a petition for divorce dated 1st April, 2011 and filed in Court on the same day. The petition is filed by S.Y.P (hereinafter referred to as “the Petitioner”) against Y.K.P (hereinafter referred to as “the Respondent”). By the petition, the Petitioner prays against the Respondent the following orders –

1. *That the marriage between the Petitioner and the Respondent be dissolved.*
2. *That the Petitioner be granted custody, care and control of the children who are still minors.*
3. *That the Petitioner be given alimony pending suit and maintenance for the children.*
4. *That the Respondent be ordered to pay reasonable maintenance and/or secured provision to the Petitioner.*
5. *That the Respondent to pay costs of this petition.*
6. *That this Honourable Court grants the Petitioner such further or other orders or reliefs as it may deem fit to grant.*

In her sworn evidence before the Court, the Petitioner testified that she filed a divorce petition against her husband and he never responded. She therefore relied on the averments contained in her petition.

According to those averments, the Petitioner and the Respondent are both British nationals domiciled in Kenya. The Petitioner is a housewife and the Respondent is a banker. The parties lawfully married in February, 1989, before a Hindu priest in Mombasa. A copy of their Marriage Certificate is attached to the petition and marked as “SYP1”. After the marriage, the parties cohabited as husband and wife in diverse places in Nairobi between 1989 and 2008. The couple has two adopted children, a son and a daughter. The Petitioner’s case against the Respondent is that the Respondent has since the celebration of the marriage treated the Petitioner with cruelty and that he is also guilty of statutory and constructive desertion.

It is the Petitioner’s evidence that the Respondent has treated the Petitioner with such extreme cruelty that it has occasioned her mental anguish, agony and embarrassment. As a result, it has driven her to such pain and ill health that she cannot be expected to live with the Respondent any longer. She accuses the Respondent of failing to give her love and affection, and that he persistently nags her. He has never tried to associate with the Petitioner’s interests and instead he forces her to abide by his interests. She further accuses him of being an introvert who never wants the Petitioner to associate with her friends and this had led the Petitioner’s friends to abandon her. He monitors the times when she arrives home and whenever she delays for a few minutes, this leads to verbal abuse.

The Respondent has been using harsh and abusive language against the Petitioner and sometimes even in

the presence of 3rd parties. Despite several reconciliatory meetings hosted by the Petitioner's parents, the Respondent's behaviour towards the Petitioner has not yielded any change.

As regards desertion, the Petitioner's case is that the Respondent deserted the matrimonial home on 5th January, 2008. He did so on his own volition and started living separately apart from the Petitioner. Since that date, they have been living separately and have not cohabited as husband and wife.

What comes out of this evidence is that this marriage is irretrievably broken down beyond repair. The Respondent's attitude towards the marriage is clearly spelt out in his conduct towards the Petitioner. His deliberate refusal to defend himself against the accusations levelled against him demonstrates beyond peradventure his undiluted apathy towards his relationship with the Petitioner. His silence is a silent plea and admission of guilt. It is also scornful of the marriage between the parties and the Respondent wouldn't care less if it is dissolved.

Sometimes, mental cruelty can be more devastating than physical cruelty. The depth to which the victim suffers is immeasurable and probably inexplicable. Only the victim knows how it feels. On the facts outlined above, I find that the Petitioner has been subjected to mental cruelty for which offence she is entitled to divorce on the ground of cruelty.

In the same breath, I find that the Respondent has deserted the Petitioner for more than 3 months without reasonable cause and this is another offence under **Section 8 (1) (b)** of **Cap. 152** upon which a divorce may also be granted.

In sum, I find that the Petitioner has proved her case against the Respondent. I accordingly make the following orders –

- (i) The marriage celebrated between the parties in Mombasa on 12th February, 1989 be and is hereby dissolved.***
- (ii) Decree nisi to issue forthwith.***
- (iii) The decree nisi to become absolute after 30 days upon application by either of the parties.***
- (iv) The Petitioner be and is hereby granted custody, care and control of the children.***
- (v) The Respondent to pay the costs of this petition.***

Orders accordingly.

DATED and DELIVERED at NAIROBI this 14th day of February, 2012.

L. NJAGI
JUDGE