



S.P.C..... PETITIONER

VERSUS

M.S.C..... RESPONDENT

A.MCO-RESPONDENT

JUDGMENT

The petition before the Court was dated and filed on 21st June, 2011. The Petitioner thereby seeks orders that the marriage between the Petitioner and the Respondent be dissolved, and that the costs thereof be provided for. In spite of being served with the petition, the Respondents did not file their answer to the petition and/or cross-petition for divorce. The petition was therefore heard undefended.

The Petitioner's case is that the parties solemnized their marriage on 21st October, 1996. Their union was blessed with two issues, a son born in February, 2003 and a daughter born in August, 2006. He accuses the Respondent of having committed adultery since the celebration of the marriage. The particulars of the said adultery are that –

- (a) In 2004, the Respondent while enroute to Bombay from Kenya, met one A.C in the plane, with whom the Respondent confessed to the Petitioner of having had an affair, after the Petitioner discovered some romantic messages from the Respondent's phone.***
- (b) In April-May, 2010, while the Petitioner had traveled to Tanzania on official duties, the Respondent informed the Petitioner upon his coming back from Tanzania that she met and fallen in love with on A.M with whom the Respondent confessed to have been having an intimate affair.***
- (c) In July, 2010 while the Petitioner was on an official assignment in Tanzania, the Respondent disserted the matrimonial home and eloped with the said A.M for unknown destination, leaving the issues of marriage in custody of the house help.***
- (d) That since the said desertion, the Respondent has never come back to the matrimonial home and continues committing acts of adultery with the said A.M.***

These are serious allegations. It is noteworthy that the petition is

undefended. In my view, that is an indirect way of conceding the marital offence levelled against the Respondents. If there was any doubt that the Respondents were cohabiting, the affidavit of service lays bear the cohabitation as factual since the two were served with Court process together in the presence of the Petitioner. The facts as pleaded are not controverted in any manner and I therefore find and hold that the Petitioner has established marital infidelity against the 1st Respondent for which he is entitled to divorce as prayed.

Watching the Petitioner testify in Court, I was left in no doubt that his demeanour was that of a witness of truth and a deeply wounded spouse. I was satisfied that he told the Court the truth, the whole truth and nothing but the truth thereby observing the oath he had taken.

For these reasons, I find that the Respondent is guilty of the matrimonial offence of adultery for which the Petitioner is entitled to divorce. I accordingly make the following orders –

- 1. *The marriage solemnized between the Petitioner and the 1st Respondent herein is hereby dissolved.***
- 2. *Decree nisi to issue.***
- 3. *Decree nisi to become absolute after 90 days upon application by any of the parties.***
- 4. *Until further orders, if any, the custody of the children of the marriage is committed to the Petitioner.***

Orders accordingly.

DATED and DELIVERED at NAIROBI this 22nd day of March, 2012.

L. NJAGI
JUDGE