



M.W.G..... PETITIONER

VERSUS

A.J.G..... RESPONDENT

JUDGMENT

By an undated petition filed in Court on 2nd February, 2011, the Petitioner prays for orders that the marriage between her and the Respondent be dissolved forthwith; that the Respondent do provide alimony or a reasonable sum as settlement to the Petitioner; costs of this petition; and any other relief that the Court may deem fit to grant in the circumstances.

According to the pleadings, the Petitioner states that the couple married in November, 2000 and the marriage was solemnized at the office of the Registrar of Marriages in Nairobi. After the marriage, the couple cohabited as husband and wife in Nairobi. Since the celebration of the marriage, the Petitioner accuses the Respondent of being guilty of deserting the matrimonial home for no justifiable reason for a period of 10 years. She also contends that from the time he deserted the Petitioner, the Respondent has been guilty of adultery with various women which has caused the Petitioner mental torture and anguish.

In addition to desertion and adultery, the Petitioner also accuses the Respondent of subjecting her to mental cruelty by denying her conjugal rights and loathing to be associated with the Petitioner socially. In consequence, the marriage has irretrievably broken down and all entreaties to reconcile have come to nothing.

In his reply to the petition, the Respondent denies the particulars of desertion and avers that despite his absence from Kenya due to the nature of his work, he is continuously in touch with the Petitioner and the parties have been on good mutual terms. The Petitioner is therefore put to strict proof of the alleged desertion. Regarding the issue of mental torture, the Respondent avers that the relationship between the parties has been cordial, lacking any disaffection on either party, and that the allegations made by the Petitioner are meant to elicit sympathy from the Court. Otherwise, HE maintains that he consistently visits Kenya to be with the Petitioner.

At the hearing of the petition, Mr. Madara appeared for the Petitioner while Mr. Sijeny held brief for Mr. Maingi Gitau for the Respondent. The Petitioner gave sworn testimony and told the Court that she was a Consultant and that the parties were married in 2000 and that there were no children of the marriage. The Respondent went to Nigeria immediately after they married in 2000. For a year or two, she used to visit him about once or twice in a year and that the marriage was never consummated. She was 33 years old and wanted to have children. However the Respondent deserted her about 12 years ago.

Regarding mental cruelty, she testified that there was no communication between the parties; that she had been denied her conjugal rights; and that the Respondent never visited her. She therefore prayed for the marriage to be dissolved and for payment of her costs. She also sought financial support.

After the examination-in-chief of the Petitioner, Mr. Sijeny told the Court that he had no instructions to cross-examine her. The Petitioner's evidence therefore went unchallenged.

It is clear from both the petition and the evidence adduced in Court that the petition is based on two main grounds. The first one is desertion. According to the evidence on record which is supported by a certified copy of an entry of marriage, the parties married in November, 2000. The Petitioner's case and evidence is that the Respondent deserted the matrimonial home for no justifiable reason for a period of 10 years. **Section 8 (1) (b) of the Matrimonial Causes Act** states that **“a petition for divorce may be presented to the Court either by the husband or the wife on the ground that the Respondent has deserted the Petitioner without cause for a period of at least 3 years immediately preceding the presentation of the petition.”** In his reply to the petition, the Respondent alleges that he is continuously in touch with the Petitioner and has been in good mutual terms with her, and that the relationship between the two has been cordial and lacking any disaffection on either party. I can take this statement only with a grain of salt. If it was true, the Petitioner would not be talking of having been deserted for more than 10 years. I also note from the afore-mentioned reply that the Respondent avers that he has consistently visited Kenya to be with the Petitioner and that he has not denied the Petitioner her conjugal rights. Unfortunately for him, he has not adduced any evidence to show that he has “consistently” visited Kenya to be with the Petitioner as alleged or at all. He could, for example have attached a copy of his passport to show to the multiple entries into and out of Kenya to prove that statement. However, he has done nothing of the sort. His further statement that he has not denied the Petitioner her conjugal rights cannot be taken seriously.

On account of the foregoing, I find and hold that the Petitioner has proved desertion which entitles her to an order for divorce.

Secondly, the Petitioner's case is that the marriage between the parties has irretrievably broken down. Invitations to the Respondent to reconcile have gone begging with the latter claiming to be too busy. In the context of the Petitioner's complaints, I am left with no option but to conclude that the marriage has, indeed, irretrievably broken down which fortifies the view that the Petitioner is entitled to an order for divorce.

For these reasons, I hereby make the following orders:

- 1. That the marriage solemnized in November, 2000 between the parties at the Registrar's office in Nairobi be and is hereby dissolved.***
- 2. Decree nisi to issue.***
- 3. Decree nisi to become absolute after 90 days from today upon application by any of the parties.***

I decline to order any alimony or costs as these will only prolong the Petitioner's agony. The earlier she picks up the pieces and comes to terms with herself and keep marching in life, the better for her.

DATED and DELIVERED at NAIROBI this 15th day of March 2012.

L. NJAGI
JUDGE