



F.O.O..... PETITIONER

VERSUS

N.M.O..... RESPONDENT

JUDGMENT

By a petition dated 27th May, 2011 and filed in Court on 30th May, 2011, the Petitioner prays for orders that –

- (a) *The marriage between the Petitioner and the Respondent be dissolved.***
- (b) *Custody of the minor children of the marriage be granted to both parties.***
- (c) *The Respondent do bear the costs of this petition.***

The petition is founded on the grounds that the Respondent has been adulterous, cruel to the Petitioner, and that the marriage has irretrievably broken down.

An affidavit of service on record shows that on 22nd June, 2011, the Respondent was served with a Notice to appear. However, she did not do so. Similarly, on 15th November, 2011 she was served with a notice to the effect that the case would come for hearing on 1st December, 2011 and she did not attend Court on the material date. However, the matter did not proceed on that day and it finally proceeded to hearing on 23rd February, 2012 in her absence.

The Petitioner testified on oath to the effect that the couple married in 2001 and were blessed with three children aged 9, 7 and 4 years. Regarding the ground of adultery, the Petitioner testified that sometime in 2008, the Respondent slept out for four nights and when the Petitioner confronted her, she said that she had gone to Uganda to see her brother. During that period she had switched off her phone. After she came back on the 5th day, the matter was discussed before their parents but no solution was found. It was also his testimony that most of the time the Respondent goes away, and that at one time she contracted gonorrhoea.

The Respondent’s conduct is, indeed, very suspicious. But that is all it is. It would not be proper to infer that she was out committing adultery in the absence of some more cogent evidence.

I note that the Petitioner alleged that the Respondent contracted gonorrhoea. However, he did not elaborate how he knew that she had gonorrhoea. If she had infected him with gonorrhoea, there would be no other inference than that she had, indeed, committed adultery. But that incidence requires further and better particulars. On that basis, I would give her the benefit of doubt and hold that the offence of adultery has not been proved to the required standard.

The ground of cruelty, however, bears more weight. The Petitioner testified that in July, 2011, the Respondent poured paraffin on the children of their marriage in a bid to burn them. The neighbours intervened and duly reported the matter to the police. On January 8, 2012, she beat their first born child

until he got hurt. The Petitioner produced a P3 Form and a note from a pharmacy. Both documents show that the child indeed was assaulted by an “irate mother” and that he sustained “swellings on the head, nose- bleeding, sore limbs, and general body pains.” The Respondent’s conduct was no doubt physically cruel to the child. And when one spouse is physically cruel to a child or children of the marriage, such a spouse inflicts mental cruelty on the other spouse. An innocent, loving parent gets mentally hurt when any pain is inflicted on his/her child. For this reason, I find the Respondent guilty of mental cruelty to the Petitioner.

Finally, the Petitioner testified that the Respondent keeps on harassing him. Even after the children were committed to the Petitioner’s custody by the Children’s Department, the Respondent keeps attempting to “steal” them from school. On one occasion she even sent some men to attack the Petitioner and the incident was reported to the police. In my view, the total effect of all these incidents constitutes a clear manifestation that this marriage has irretrievably broken down. In the circumstances, I am satisfied that the Petitioner is entitled to a divorce and I accordingly make the following orders –

- 1. That the marriage solemnized at the Registrar’s office, Nairobi on 13th January, 2004 between the Petitioner and the Respondent be and is hereby dissolved.***
- 2. Decree nisi to issue.***
- 3. Decree absolute to issue after three months upon application by either of the parties.***
- 4. Each party to bear its own costs of this petition.***

DATED and DELIVERED at NAIROBI this 26th day of April, 2012.

L. NJAGI
JUDGE