



J.A.M.....PETITIONER

VERSUS

H.M.A.....RESPONDENT

JUDGEMENT

1. The petitioner in the Divorce Cause No.[.....] married the respondent under the Marriage Act (Chapter 150 of the Laws of Kenya) on 9th February 1974. The marriage was formalized at the office of the Registrar of Marriages, Nairobi as proved by the Marriage Certificate No: {particulars withheld} produced before court as an exhibit.

2. The petitioner prays that this court issues a decree for the dissolution of the said marriage on the grounds that the same has irretrievably broken down for reasons of cruelty, adultery and desertion by the respondent. The particulars of the said cruelty, adultery and desertion are set out in paragraph 8 of the petition as follows:-

(a) The respondent has on several occasions habitually, wilfully, intentionally and without any lawful excuse or provocation hurled insults, picked quarrels and exhibited contempt on the petitioner in public and in private thereby causing the unnecessary shame embarrassment and mental anguish.

(b) The respondent has been aggressive, provocative, violent, ill tempered, sulky, quarrelsome and has maintained a persistent and unjustified attitude of open hostility and extreme arrogance towards the petitioner.

(c) The respondent has totally and wilfully taken possession and converted all the family resources, thus subjecting the petitioner to suffering and inconvenience leading the petitioner into destitution and forcing him to live in the rural home due to exposure to hardship and suffering.

(d) On several occasions during the marriage the respondent has used vulgar, crude, abusive and disrespectful words against the petitioner thus painting the petitioner horrendously without any cause or excuse for behaving in the cruel manner or at all towards the petitioner.

(e) The respondent suffers from acute unsoundness of mind culminating into fits of anger and unbearable hostility towards the petitioner and has on several occasions physically assaulted the petitioner.

(f) That the respondent caused one J. M. who was her boyfriend to reside with her in the matrimonial home at {particulars withheld} without regard to provocation embarrassment and cruelty caused to the petitioner and the family.

(g) That the respondent has since moved to live in the United States of America thus deserting the matrimonial home, with no intention of coming back to reside with the petitioner.

3. Upon being served with the petition, the respondent appeared and filed her answer to petition and cross

petition on 22nd September 2009. The petitioner then filed an answer to the cross petition on the 13th October, 2009. She states that it is the petitioner and not herself who has brought about the collapse of the marriage by his violent cruel and lazy disposition. The respondent accuses the petitioner of cruelty, and desertion as particularized in paragraph 8, 9 and 10 of the cross petition.

4. In paragraph 8 of the respondent states as follows:-

- a. The respondent avers that it is the petitioner who deserted the matrimonial home and thus denied her, her conjugal rights.***
- b. The petitioner treated the respondent with utmost cruelty subjecting her to unjust and inhuman treatment, particularly by soliciting for sex from various female servants employed by the neighbours.***
- c. The petitioner has psychologically tortured the respondent thus creating an atmosphere that is untenable as far as mutual accommodation is concerned, and refused to come to the matrimonial home or pay rent for the house.***
- d. The petitioner has blatantly and without due regard to the respondent's feelings and conjugal rights consorted with a house girl of a neighbour.***
- e. The petitioner used to verbally and physically assault the respondent, leading physical injuries that required hospital visits in some instances.***
- f. The petitioner wantonly and without justifiable cause accused the respondent of having an affair with a certain M., a counsellor who was trying to help the petitioner and the respondent with their marital woes.***

5. The Particulars of adultery are set out in paragraph 9 of the cross petition as follows:-

- a. The petitioner has been having an illicit and incestuous affair with the aforesaid house girl of a neighbouring house***
- b. The petitioner in 2003 took the aforesaid young woman to his up country home and installed her as a second wife.***
- c. The petitioner has solicited sex from the respondent's female house servants and led to some of them leaving employment.***
- d. The petitioner has another wife, regardless of the fact the marriage between him and the respondent still subsists.***

6. The Particulars of desertion as set out in the cross petition are as follows:

- a. Moving out of the matrimonial home so as to "marry" his aforesaid girlfriend.***
- b. Voluntary vacating the matrimonial home without any provocation by the respondent.***

7. The respondent neither attended court to testify nor were any submission filed on her behalf. In his sworn testimony, the petitioner told the court that he and the respondent had been blessed with seven issues of their union, 4 boys and three girls now aged between 39 and 29 years.

8. The petitioner gave an account of his futile attempts at reconciliation which he says were frustrated by the respondents continued stay in the United States of America where she moved to in 2006. He sees no possibility of reconciliation.

9. I find that the allegations in the cross petition having not been supported by the testimony on oath, are

not proven. On the other hand, the testimony of the petitioner, as presented, suffices to lead me to conclude that the marriage has irretrievably broken down. I see no evidence that the petitioner has condoned the actions of the respondent.

10. I am satisfied that the petitioner has proved his case to the required standards and that the same has not been presented in collusion with the respondent.

11. Accordingly, the marriage between the petitioner and the respondent is hereby dissolved. A decree nisi shall issue forthwith.

12. Orders accordingly.

DATED, SIGNED and DELVIERED at NAIROBI this 28TH DAY OF June 2012.

M.G. MUGO

JUDGE

In the presence of :

Mr. Rombo for the petitioner.

No appearance for the respondent.