



DCM.....PETITIONER

VERSUS

PKC.....RESPONDENT

JUDGEMENT

The petitioner in the Divorce Cause No. 151 of 2011 married the respondent under the Marriage Act (Chapter 150 of the Laws of Kenya) on 1st July 1997 but had previously cohabited with him since April 1994. The marriage was formalized at the office of the Registrar of Marriages, Nairobi as proved by the Marriage Certificate No: [...] produced before court as an exhibit.

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 of and desertion by the respondent. The particulars of cruelty are set out in paragraph 6 of the petition and range from assault, neglect, abandonment and deprivation of basic human necessities and permanent dispossession of matrimonial properties, occasioning the petitioner untold mental, physical and psychological torture and leading her to live in perpetual stress and fear of the respondent. The particulars of desertion are that the respondent left the matrimonial home in the year 2001 and has never returned. He is presumed by the petitioner to be living in Botswana, probably with another family.

Despite being served with the petition on 29th November 2011, the respondent neither appeared in the Cause nor filed any papers in response thereto. The petition therefore proceeded ex parte, with a hearing notice having been served on the respondent but equally ignored.

In her sworn testimony, the petitioner told the court that she and the respondent had been blessed with two issues of their union, a boy and a girl now aged 17 and 13 years respectively. The two have been living with the petitioner who has taken care of all their needs without any assistance from the respondent, who has never sought to see them since deserting the matrimonial home. She testified further that the respondent sold the family's matrimonial home and a 5 acre plot in Sotik, both of which had been purchased through her contribution. This left the petitioner and the two children homeless. They were even evicted from the matrimonial property by the purchasers.

The petitioner gave an account of her attempts at reconciliation with the respondent which were thwarted by the respondents outright indifference and disinterest. She sees no possibility of a reconciliation owing to the pain and trauma that the 10 years of separation has caused herself and the children, the older of whom she says still recalls the physical abuse meted upon the petitioner by the respondent and which appear to have traumatized him to the extent that he fears that a reconciliation, in the circumstances, may lead to more physical harm or even death to the petitioner.

The petitioner wishes to have custody of the children whom she says she can take care of as she has always done. She also sees a possibility of being able to inherit from her parents who have assisted her and her children through the years. She is also fears that in the unlikely event that she dies, the respondent may inherit her hard-earned wealth.

I have considered the petitioner's evidence which is unchallenged. She has good cause to complain about the marriage to the respondent, which appears to have brought her more sorrow and torment than the joy expected of a marital union with children. Her desire to break away from the respondent are both justified and noble.

I find that the particulars of cruelty and the long period of desertion as presented, do suffice 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.

I find that the petitioner deserves the decree sought not only to restore her dignity as a human being, to free her to pursue her life without fear, but also to secure her wealth, present and future for the benefit of her two children. I am satisfied that the petitioner has proved her case to the required standards and that the same has not been presented in collusion with the respondent.

Accordingly, the marriage between the petitioner and the respondent is hereby dissolved. A decree nisi shall issue forthwith, which, in view of the special circumstances herein, shall become absolute after 1 month.

Further the petitioner shall have custody of the two issues of marriage, who will nonetheless retain their right to claim from the respondent their due share of his parental responsibility.

Orders accordingly.

DATED, SIGNED and DELVIERED at NAIROBI this 7TH DAY OF June 2012.

M.G. MUGO

JUDGE

In the presence of :

Mr. Mugalo for the petitioner.

No appearance for the respondent.