

M.W.K. PETITIONER

VERSUS

C.M.W. RESPONDENT

JUDGMENT

(1) The Petitioner wife sued her Respondent husband for divorce on the grounds of cruelty set out in her Petition dated 2nd March 2010. The Respondent cross-petitioned for divorce on the ground of desertion but his Cross-Petition dated 5th July 2010 was withdrawn at the hearing. The Petitioner testified in support of her Petition but the Respondent's counsel did not Cross-examine the Petitioner or call any witnesses in opposition to the Petition. The Respondent simply closed its case upon the withdrawal of the Cross-Petition.

(2) The Petitioner testified that the parties celebrated their marriage under the Marriage Act Cap 150 Laws of Kenya at the Holy Ghost Cathedral, Mombasa on the 8th July 1993, a certificate of marriage whereof was put in evidence as exhibit. She said that the parties were happy for the first 3 years of the marriage after which the Respondent started becoming cruel:

“He would go out drinking and come back home and insult me the whole night. He slapped me twice. This was about 1996 and in 2006. He had started drinking heavily. I did not seek any assistance. I kept hoping that he would change. In 2006 it became bad. We were living with his step son. I would be humiliated by his insults in front of his step son who was 14 - 17 years when he lived with us. He also threatened to kill me. He also abused me before our workers. He threatened to kill me one Friday and he asked me to leave the house. I left the house on [the following] Monday in February 2007. On the same day, he came to my mother's house in the evening saying that I had left the house. I did not meet him. I was getting a nervous breakdown. I asked him by text message not to call me. He called severally thereafter but after one year in 2008 he stopped calling and after that I moved on with my life.”

(3) The Petitioner said that she had had sessions with her Priest and her family after she left the matrimonial home but that in view of the death threat by the Respondent she could not go back and there was no possibility of reconciliation. The Petitioner had clearly not condoned the cruelty.

(4) There were no issues of the marriage and the Petitioner indicated that she did not seek any maintenance of the Respondent or claim any interest in family property. The Petitioner also abandoned the costs of the withdrawn Cross-Petition and of the Petition if successful. However, I have no evidence to suggest that the Petition was presented or prosecuted with the collusion of the parties.

(5) In the absence of evidence of the part of the Respondent and or cross-examination on the Petitioner's testimony, I accept the Petitioner's testimony that the Respondent had physically assaulted her and threatened to kill her if she did not leave their house. I therefore find that the Petitioner has proved the Respondent's cruelty causing her to leave the matrimonial home. Accordingly, the Respondent is also guilty of constructive desertion.

(6) I therefore make an order for dissolution of the marriage between the Petitioner and the Respondent solemnized on the 8th July 1993. I make no order as to costs.

Dated and delivered this 18th day of July 2012.

EDWARD M. MURIITHI
JUDGE

In the presence of: -

Mrs. Wangari for Lumatete for the Petitioner

Njoroge for the Respondent

Miss Linda - Court Clerk