



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

Divorce Cause 116 of 2010

D. G .H.....PETITIONER

VERSUS

C. A. H.....RESPONDENT

J U D G M E N T

1. The Petition dated **1st September 2010** seeks for orders that the marriage between the Petitioner and the Respondent be dissolved and that the custody of the children of the marriage be granted to the Petitioner.
2. The Petitioner, then a bachelor married the Respondent then a spinster, on the **22nd day of April 1993** at Blixen Museum, Karen in Nairobi in the Republic of Kenya in accordance with the **Marriage Act Cap 150**. The Petitioner and the Respondent both domiciled in the Republic of Kenya have co-habited in Nairobi and Mombasa since the celebration of their marriage on the **22nd day of April 1993**.
3. The Petitioner and the Respondent were blessed with two (2) issues during the subsistence of their marriage, both minors.
4. It is the Petitioner's case that the Respondent has committed acts of cruelty against him. The following is a summary of the particulars of cruelty as committed by the Respondent against the Petitioner:-
 - a) Consuming alcohol excessively for the last 15 years adversely affecting the welfare of the Petitioner and the issues of marriage.
 - b) Causing two major road traffic accidents wherein motor vehicles belonging to the petitioner have been excessively damaged and repaired at a cost of over Kshs. 200,000.00/-.
 - c) In the year 2010, while drinking from a restaurant and bar in Mombasa she insisted on driving the children home in the family car while extremely intoxicated all against the wish of the minor children.
 - d) Wastage of the family resources through an irresponsible, extravagant and hedonistic lifestyle.
5. The Petitioner avers that the Respondent has failed to cater and care for the issues of the marriage and the Petitioner in a manner expected of a wife. That the Respondent has caused him psychological torture

and that the marriage between the Petitioner and the Respondent has irretrievably broken down.

6. The Cause was undefended as the Respondent neither filed a Memorandum of Appearance nor did she file an answer to the Petition despite having been served with the said Petition and Notice to appear.

7. The matter came up for hearing on **20th September 2012** with the Petitioner providing the sole testimony on his behalf. The petitioner reiterated the fact that he married the Respondent on **22nd April 1993** in Karen and referred to the Marriage Certificate as **“Exhibit No. 1”**. He testified that he was retired and that he as well as the Respondent resided in the U.K.. He confirmed that they did not live together with the Respondent. However, when they were married, they lived together in Karen, Athi River Plains and Mombasa. He also confirmed that they have two children from the marriage.

8. The Petitioner adopted the particulars of cruelty as enumerated in the Petition and testified that the highlight of his complaint was that the Respondent was alcoholic, abusive and did not care for the children. The Petitioner further testified that the Respondent was a drain to the family finances and that she never contributed to the welfare of the children. He also testified that they had no property together with the Respondent. He concluded by stating that the marriage had irretrievably broken down and asked that it be dissolved. He also asked for custody of the children and costs. He confirmed that the children were living with him.

9. I have considered the Petition herein as well as the testimony given by the Petitioner. As earlier noted this cause is undefended. I make orders as follows:-

- a) The Petition is allowed and the marriage between the Petitioner and the Respondent is hereby dissolved.
- b) The custody of the children of the marriage is given to the Petitioner. The Respondent shall have access to the children as agreed with the Petitioner or as may be directed by this Court in future.
- c) Costs of this Petition and interest thereon shall be for the Petitioner.

It is so ordered.

DATED, READ AND DELIVERED AT NAIROBI

THIS 25TH DAY OF SEPTEMBER 2012

E. K. O. OGOLA

JUDGE

Present

Teresia – court clerk