



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Divorce Cause 30 of 2012

FMR PETITIONER

=VERSUS=

PNN RESPONDENT

JUDGEMENT

This is the Petition for Divorce filed by FMR(hereinafter referred to as the Petitioner) by which she seeks the following prayers:

“(a) THAT the marriage between the Petitioner and the Respondent be dissolved in the High Court of Kenya with effect from the date of the original Decree issued by the Chief Magistrate’s Court on the 7th day of January 2008.

(b) THAT the Petitioner may have other or further relief as this Honourable court may deem just and fit to grant”

The Petitioner was represented in this matter by MR. KITHI Advocate. The Respondent PNN despite having been properly served with the Petition and Annexures on 21st July 2012 vide Affidavit of Service filed in court on 24th July 2012 did not bother to enter appearance or file his response to the Petition. The matter therefore proceeded as an undefended cause.

The Petitioner in her evidence told the court that she is a German National and that on a visit to Kenya met and married the Respondent on 24th May 2001. She produces a copy of her Marriage Certificate Serial No. {Particulars withheld} as proof of that marriage Pexb1. The couple was not blessed with any offspring. The Petitioner told the court that their marital bliss did not last long. Whilst still on their honeymoon in Kenya she discovered that the Respondent her husband, was involved in an intimate relationship with a British woman known as ‘M’. Six (6) weeks after the marriage the Petitioner flew back to Germany. The Respondent later joined her there but only stayed for one (1) year before he left to return to Kenya. In July 2004 the Petitioner came to Kenya without informing the Respondent and caught him red-handed in a room at the Reef Hotel with his lover. The Petitioner then went back to Germany. She told the court that she last saw the Respondent in 2006. The couple have not communicated nor cohabited since then hence this Petition for Divorce.

As stated earlier the Respondent despite having been properly served failed to file any response to the Petition. The Petitioner’s evidence therefore remains uncontroverted.

Section 8(1) of the Matrimonial Causes Act Cap 152 Laws of Kenya provides the grounds upon which the courts may grant the dissolution of a marriage. S. 8(1) provides:

“8(1) A petition for divorce may be presented to the court either by the husband or the wife on the ground that the Respondent –

- (a) has since the celebration of the marriage committed adultery or**
- (b) has deserted the petitioner without cause for a period of at least three years immediately preceding the presentation of the petition; or**
- (c) has since the celebration of the marriage treated the petitioner with cruelty or**
- (d)**”

From the evidence of the Petitioner it is clear that the Respondent was involved in an adulterous relationship with this British woman called ‘M’. The Petitioner did herself track the couple to a room at the Reef Hotel where she found them together. Why would the Respondent a married man be ensconced in a hotel room with a woman who was not his wife? The only logical conclusion would be that he was engaged in an adulterous affair with this woman.

The Petitioner told the court that six (6) weeks after the marriage she returned to her native country Germany. The Respondent left Kenya to join her there but only stayed for a year before he returned to Kenya. As a husband the Respondent ought to have established a home where the couple could live. He failed to do that and instead preferred to spend time at Reef Hotel with his lover. The Petitioner has not lived with the Respondent as man and wife since 2006 a period of six (6) years. Under such circumstances how can a valid marital union be said to be subsisting? It is clear that this is a union which has irretrievably broken down. The Respondent by his actions has shown that he has no interest in the Petitioner. It would be unjust and would serve no useful purpose to condemn the Petitioner to remain bound to a man who clearly prefers somebody else. I find that the grounds of adultery and desertion are proven. The uncaring attitude of the Respondent is also a form of emotional cruelty. As such I allow this petition for divorce. Decree nisi to issue to be made absolute within six (6) months of today's date.

The Petitioner sought to have this court backdate its orders. She explained that she had erroneously filed a divorce petition in the subordinate court which had no jurisdiction to entertain such a petition. The fact that her first petition was allowed by a court which had no jurisdiction to do so renders it null, void and of no legal effect. This court cannot validate an invalid order issued by the magistrate. As such I disallow the prayer to back-date the order dissolving this marriage.

Dated and Delivered in Mombasa this 26th day of October 2012.

M. ODERO

JUDGE

In the presence of:
Mr. Kithi for Petitioner