



REPUBLIC OF KENYA

High Court at Mombasa

Divorce Cause 32 of 2011

C. N. J. PETITIONER

VERSUS

N. H. M. RESPONDENT

JUDGMENT

(1) The Petitioner has sued her Respondent husband for divorce on the grounds of cruelty and adultery. A prayer for division of matrimonial property contained in the Petition dated 8th August 2011 was abandoned at the hearing which proceeded as an undefended cause following failure of the Respondent to enter appearance and defend the suit. The parties married on 30th June 2004 at the Registrar of Marriages, Mombasa.

(2) In adducing evidence before the court, the Petitioner testified that:

***“Since the marriage, we were staying at D[...], South Coast. I have filed for dissolution for the marriage. I have based it on cruelty and adultery. After we married, my husband continued to be a drunkard and could not provide for us. When I asked for provisions he would beat me. He could not keep a job and he used to take my ATM and withdraw money. I reported him to Diani Police Station but I could not get help because he was an ex-policeman. I reported the matter to his family members but they could not help because he used to beat them. He used to beat me and abuse me in front of the children. He threatened me that he would one day kill me and I fear to live with him in the same house.*”**

On several occasions, I caught him sleeping with women in the house. One day, I found our house-girl crying and she said she had been forced to sleep with him. She ran away when I asked her to report the matter to the police. We had a bar at U[...] and he used to live in the lodgings without coming home. When I asked him, he said that I should go back as married women stay in the house and do not go looking for their husbands. I have not condoned any of these acts.”

(3) Having observed the Petitioner testifying before the court, I formed an opinion that she was telling the truth taking into account her confident demeanour and coherent presentation. I however do not find that sufficient evidence was presented to support the charge of adultery. Moreover, if indeed the Respondent had been **“caught on several occasions sleeping with women in the house”**, the Petitioner may have condoned the repeated acts of adultery, if she continued conjugal cohabitation. See section 10 of the Matrimonial Causes Act. From the evidence, it was the Respondent who left the matrimonial home on the 29th April 2009.

As regards the charge of cruelty, I consider the Respondent's insults and beatings upon the Petitioner

and the withdrawal of money from the Petitioner's ATM without her consent are all an affront to the Petitioner's dignity as a person and amount to cruelty. Moreover, the threats to kill the Petitioner would instill, understandably, emotional distress and fear taking into account the Respondent's position as an ex-policeman. I therefore find the charge of cruelty proved against the Respondent.

(4) The Petitioner requested that the decree absolute do issue immediately but I have not found in her evidence any justification to waive the requirement of the 6-month period before a decree nisi for divorce is made absolute. Furthermore, I was informed by the Petitioner that there are ongoing proceedings for the maintenance of children at the Tononoka Children's Court, and the Respondent may in terms of section 15 (2) and (3) of the Matrimonial Causes Act show cause not only why the decree nisi should not be made absolute, but why it should be reversed.

(5) Accordingly, for the reasons set out above, I grant the decree nisi for divorce on the ground of cruelty. As the Petition proceeded to hearing as an undefended cause, I do not make any order as to costs.

Dated and delivered this 9th day of November 2012.

EDWARD M. MURIITHI
JUDGE

In the presence of:

Mr. Owino for Bosire for the Petitioner

No appearance for the Respondent

Linda Court Clerk