



REPUBLIC OF KENYA

High Court at Mombasa

Divorce Cause 25 of 2010

E. M. PETITIONER

VERSUS

M. A. O..... RESPONDENT

JUDGMENT

(1) The Petitioner seeks the dissolution of his marriage with the Respondent which was celebrated on the 23rd January 2008, on the grounds of cruelty and adultery. The Respondent although duly served did not enter appearance or file any answer to the Petition and the matter proceeded as an undefended cause in the absence of the Respondent, the Petitioner having abandoned the costs of the suit and there being no issues of the marriage.

(2) The Petitioner testified and gave his principal complaint against the Respondent as follows:

“After marriage we lived at Tudor as husband and wife. She later returned to Denmark in March 2008. She did not live with me throughout. She would come and go regularly and then left in January 2009. She stayed with me for two days and then she would go out with friends and claim that she had been bored with life in Denmark and wanted to have fun. We never had a child. My grievance is that she refused to make food for me and she was hot-tempered. She used to drink and go out with friends knowing too well that I do not like drinking. In December 2009, on Christmas day, while in a group of friends and relatives, she started taking beer while she knew I do not drink. I thought she did this to spite me. She knew I was a Christian and I did not drink. Several times in December 2009 she would leave home to go out and she would not receive my calls. She said that she had gone to entertain herself. On the 25th December 2009, she left and went out and later went to her parents. When I asked why she did not come home, she said she had a right to do as she liked.”

(3) The Petitioner did not adduce evidence relating to the charge of adultery save for an allegation that the Respondent kept the company of male friends.

(4) The Petitioner testified that he had tried to reconcile with the Respondent through their Church Pastor and elders, without success. He seeks dissolution of the marriage to enable him proceed with his life pointing out that he is only 34 years old with much life ahead of him. He pointed out that he only lived with the Respondent continuously for 3 months before she went to Denmark and that he last saw the Respondent in December 2009.

(5) I have considered the matter and I find that no evidence have been presented to prove the allegation of adultery against the Respondent. I however find the charge of cruelty to be proved on account of the insensitive treatment that the Respondent meted out to the Petitioner with respect to her drinking habits and the emotional anguish that this caused upon her Christian husband who to her knowledge hated drinking.

(6) I have considered that although the Petition was presented after only 2 years of marriage without leave of the court under section 6 of the Matrimonial Causes Act, the Petitioner's evidence as to the failed attempts at reconciliation after living together for only 3 months and the expressed desire of the Respondent to stay in Denmark and Petitioner in Kenya make it improbable that the parties may get back together. Moreover, it was at the time of hearing of the Divorce Cause over 4 years since the parties married. I therefore waive the requirement of the three years period before commencement of dissolution proceedings under the Matrimonial Causes Act.

(7) For the reasons set out above, I grant the Petitioner's prayer for dissolution of his marriage with the Petitioner with no order as to costs.

Date and delivered on this day of 9th November 2012.

EDWARD M. MURIITHI

JUDGE

In the presence of:

Mr. Owino for Addoch for the Petitioner

No appearance for the Respondent

Linda Court Clerk