



REPUBLIC OF KENYA

High Court at Mombasa

Divorce Cause 38 of 2010

D.N.K. .... PETITIONER

VERSUS

S.M.K. .... RESPONDENT

JUDGMENT

(1) The petitioner who claimed to have married, as a spinster, the respondent, who was then a bachelor, in 1991 under Kikuyu customary law and thereafter solemnized their marriage in 1995, when a certificate of entry of marriage was issued and which was now held by the respondent, sought the dissolution of this marriage on the grounds as set out in her petition dated 30<sup>th</sup> August 2010 at paragraphs 7, 8 and 9, as follows:

***“7. That due to irreconcilable differences between the Petitioner and the Respondent, the Petitioner and the Respondent have been separated since May 1996.***

***8. That the Respondent has since leaving the Petitioner not been maintaining the issues of the marriage including educational expenses.***

***9. That a year after the separation, the Respondent committed and continues to commit an act of adultery by taking and staying with another lady as his wife.”***

(2) Despite service of the Petition and hearing notices for every court appearance, the Respondent did not respond to the Petition and the same finally proceeded to hearing as an undefended cause on the 12<sup>th</sup> March 2012 when the Petitioner testified and judgment was reserved.

(3) In her testimony, the Petitioner described her life with the Respondent as follows:

***“We lived together between 1991 and 1996. We lived at Nyeri. We first had a Customary Law marriage in 1991 and later in 1995 we formalized the marriage at P.C.E.A. Church Nyeri. I have the marriage certificate of 29<sup>th</sup> December 1995. I produce a copy of the marriage certificate. We had children [J.W.] aged 20 years and [B.K.] aged 18 years. I live with them. We lived together with the Respondent until 1996. It was the culmination of problems in the marriage. The Respondent was drinking a lot and there were issues of infidelity. After 1996, I was transferred to Kwale from Nyeri. We lived together from March 1996 to the end of the year. Since the end of 1996 we have never met with the Respondent. I have now filed for divorce. I seek to have the whole family know how things were because we never lived as husband and wife. I only seek the dissolution of marriage. I pray for costs of the cause.”***

Counsel for the Petitioner submitted that the Petitioner had proved her case and urged the court to

look at the Petition filed and grant the prayers sought.

(4) I consider that the Petitioner has proved cruelty on the basis of mental suffering and loss of companionship and support during the long period of separation since 1996 when their children would have been aged 4 and 2 respectively. As the parties have not met for the 16 years since the break up in 1996, I take it that the marriage has irretrievably broken down by reason of the long separation. In the circumstances, the Petitioner should be freed from such marriage to enable her to lawfully lead a separate life.

(5) Although the Petitioner sought costs of the Petition, I do not find any reason to depart from conventional wisdom generally against awarding costs in matrimonial disputes.

(6) Accordingly, for the reasons set out above, I grant the order for decree nisi of divorce as sought in the Petition to dissolve the marriage between the Petitioner and the Respondent solemnized on the 29<sup>th</sup> December 1995, with no order as to costs.

**EDWARD M. MURIITHI**

**JUDGE**

**Dated and delivered this 11<sup>th</sup> day of December 2012.**

**EDWARD M. MURIITHI**

**JUDGE**

In the presence of:

No appearance for the Petitioner

No appearance for the Respondent

Mr. Buoro - Court Clerk