REPUBLIC OF KENYA

High Court at Mombasa

Divorce Cause 36 of 2010

M. K.…..... PETITIONER

= VERSUS =

M. K …..... RESPONDENT

JUDGMENT

(1) The Petitioner and the Respondent, respectively wife and husband, by Petition dated 2nd August, 2010 and cross-petition dated 13th September 2010 seek the dissolution of their marriage contracted on 23rd January 2004 at Mombasa under the Marriage Act Cap 50 of the laws of Kenya, on the grounds respecting and cruelty, and desertion and cruelty. During the hearing of the petition and cross-petition, the Petitioner withdrew with the consent of the Respondent for claim for alimony and costs.

(2) In her evidence-in-chief, the Petitioner presented her claim as follows:

" I have filed a dissolution of marriage. My prayers are in the petition. The grounds for the dissolution of marriage. We have not been living together since 2007. There were disputes as to the business when he asked me to remain at home as he gave the business to his relatives. I married the Respondent in 2004 but we had lived together and had children since 1987. We had 3 children - H.K, 12 years; S.K 11 years and T.K 11 years. I seek dissolution of marriage. I seek for maintenance..."

As cited above the Petitioner subsequently withdrew her claim for alimony against the Petitioner.

(3) The Petitioner alleged cruelty against the Respondent since 2005 and particulars of cruelty given by the Petitioner at paragraph 6 of the petition were that:

(a) The Respondent denies the Petitioner conjugal rights.

(b) The Respondent has deserted his family.

(c) The Respondent is very violent in nature and reacts very rapidly in case of small misunderstandings.

(d) The Respondent is verbally violent and abusive and has mental anguish to the Petitioner who is afraid of her life.

(4) I do not find evidence in the Petitioner's testimony-in-chief on which under cross-examination by counsel for the Respondent to support the allegations of cruelty against the Respondent as set out above, and I accordingly dismiss the Petition dated 2nd August 2010.

(5) The Respondent's case as set out in his cross-petition is that the Petitioner was in constructive desertion having chased him away in July 2007 and that the Petitioner had been cruel to him by her causing him mental anguish through drinking long into the night with men who then brought to the matrimonial home; mismanaging his family bar business; violently demand for money at the Respondent's mother's funeral; prohibiting the children of the marriage from visiting the Respondent or his relatives; causing the Respondent to be arraigned on criminal charges in court in Cr. Case number 2725 of 2007 of which he was acquitted but which occasioned delay in his return to Germany and therefore loss of his job and business in Germany, among other complaints.

(6) On consideration of the Respondent's evidence-in-chief and the cross-examination by the Petitioner, I find that the Respondent has established the following facts:-

(a) The Petitioner had upon a dispute relating to the management of a bar business established by the Respondent, caused the Respondent to be charged for assault of which he was acquitted.

(b) On return from Germany following the dispute as to the running of the bar business, the Respondent went

home and found the Petitioner's family where upon he was chased away by the Petitioner and her relatives.

(c) The Petitioner had removed the children of the marriage from Bustan Church to Nyali Church to cut them out from the Respondent's family members.

(d) The Petitioner had taken away all the property from the bar business.

(e) At the Respondent's mothers' funeral on 6th February 2010, the Petitioner had approached the Respondent asking for maintenance money and when given a cheque, she rejected it and the Respondent had to seek the assistance of his employer.

(7) The allegations that the Petitioner had mismanaged the bar business were in the absence of statements of bank accounts and the relevant documents not proved. Neither was the caused statement that the Petitioner had a boyfriend with whom she lived in the matrimonial home sufficiently proved.

(8) However, I find that the evidence before the court is sufficient to support the case of constructive desertion and cruelty against the Petitioner because of the effect that the said acts of the Petitioner must have had on the emotional health of the Respondent as well as his loss of property and earning capacity both in Kenya and in Germany.

(9) Accordingly, I find that the Respondent has proved his grounds for divorce set out in his cross-petition dated 13th September 2010. There is no evidence that the petition and cross-petition were presented in collusion of the parties. I have noted that parties have not lived together since 2007 and that efforts to reconcile them were unfruitful.

(10) I therefore make the following orders in the matter:

(a) The Petitioner's petition dated 2nd August 2010 is dismissed.

(b) The Respondent's cross-petition of 13th September 2010 is allowed as prayed in prayers (a) and (b) thereof.

(c) Each party to bear its own costs.

Dated and delivered on the 11th of December 2012

EDWARD M. MURIITHI

JUDGE

In the presence of:

No appearance for Petitioner

Mr. Kithi for Osino for Respondent

Mr. Obuoro - Court clerk