



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
DIVORCE CAUSE NO 13 OF 2008

E.C.M.....PETITIONER

VERSUS

S.K.S.....RESPONDENT

JUDGMENT

In her petition filed on 17th March, 2008, **E.C.M.** (hereinafter “the Petitioner”) seeks dissolution of her marriage to her husband **S.K.S.** (hereinafter” the respondent”) on grounds of adultery, cruelty, and desertion. With respect to desertion the petitioner stated that the respondent has for a period of over three years preceding the filing of her petition been guilty of constructive desertion and during that period, no conjugal relations have taken place between them. The petitioner therefore contends that her marriage to the respondent has irretrievably broken down and should be dissolved.

In the petition, the petitioner sates that they are blessed with one issue namely **D.K.S** born on 4th February, 1999 and that she is an administration Manager by Profession while the respondent is a farmer both being domicated in Kenya.

When the respondent was served with the petitioner, he filed an answer to the petition denying the allegations in the petition and cross -petitioned for divorce on grounds of cruelty and desertion. In the particulars of desertion the respondent stated, *inter alia* that the petitioner fled the matrimonial home in 2011 and has never resumed cohabitation. He also pleaded that the marriage between them has irretrievably broken down. In her reply and answer to the cross -petition, the petitioner reiterated her averments in the petition and denied the allegations in the cross petition.

The pleadings were in that state when the hearing of the petition and the cross petition commenced before me on 28th March, 2001. In her oral testimony in court, the petitioner stated, *inter alia*, that she and the respondent were married on 24th September, 1998, under the marriage Act (Cap 150 Laws of Kenya.) She produced a Certificate of Marriage to buttress her evidence. She is an [*profession withheld*] in Nairobi while the respondent is a farmer. She now lives at an Estate in Nairobi with the issue of the union, **D.K.S** where he goes to school. She has been living away from the respondent since August, 2001 and has not since then had any conjugal relations with the respondent. In her view the marriage has irretrievably broken down as the respondent is living with another woman. She therefore prayed for dissolution of the marriage, maintenance of the said issue and costs of the petition.

In Cross-examination, the petitioner stated that when desertion commenced in august, 2001, she was a University student and used to visit the matrimonial home to see the said issue who was residing with the respondent’s mother. She further testified that she left the matrimonial home because the respondent was living in adultery and was cruel to her.

The respondent testified, *inter alia*, that he had a serious accident in 1998 and was still recovering from that accident for the period he stayed with the petitioner. He further stated that the petitioner was cruel to him and ended up leaving him in the year 2001. In his view their marriage has irretrievably broken down.

In cross-examination, the respondent admitted that since 2001, they had not cohabited nor had any conjugal relations. He reiterated that the marriage is a shell.

Having considered the evidence adduced before me, it is clear that the petitioner and the respondent have not cohabited since the year 2001. The petitioner blames the desertion on the respondent and the respondent blames the same upon the petitioner. The petitioner however, testified that she left the matrimonial home because the respondent was living with another woman. The respondent did not deny that allegation. In the premises, I find and hold that the petitioner has established the ground of desertion. Since the year 2001, the couple

have lived separate lives. Ten (10) years down the line, this marriage cannot be saved. It has irretrievably broken down. The same is hereby dissolved. Decree nisi shall issue forthwith and the same be made absolute after the statutory period.

The only issue of the marriage, D.K.S is now aged about 12 years. I make the following orders in respect of the same issue:

(1) ***Custody of D.K.S the said issue, be and is hereby granted to the petitioner.***

The respondent to have unfettered access to the said child on prior arrangement with the petitioner.

(2) ***The respondent to be responsible for paying all school fees and all school requirements for the said child.***

(3) ***The petitioner to meet all the other needs of the said child.***

Each party to bear her/his own costs of the petition. Orders accordingly.

DATED AND DLIVERED AT ELDORET THIS 9TH DAY OF MAY, 2011.

F. AZANGALALA

JUDGE

Read in the presence of:

Soloveya H/B for Odede for the Petitioner and
Kipseii for the Respondent.

F. AZANGALALA

JUDGE

9TH MAY, 2011