



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MOMBASA

MATRIMONIAL CAUSE NO. 60 OF 2010

J.S.L. PETITIONER

=VERSUS=

J.N.O. RESPONDENT

JUDGEMENT

This is the divorce petition of **J.S.L.** seeking the following:

- “(a) An order that the marriage between the parties herein be dissolved.***
- (b) That the Respondent be restrained from entering, remaining in the Petitioner’s house at [.....] or M-pesa business premises in J[...] and from harassing, stopping, talking to or otherwise interfering with the Petitioner.***
- (c) That this Honourable court be pleased to make any further or other orders as it may be just”***

The Respondent **J.N.O.** was duly served with the petition as well as a summons to enter appearance. The Respondent did not enter appearance and neither did he file a response to the Petition. The matter therefore proceeded as an undefended cause.

The Petitioner told the court that she is a police officer attached to Urban Division in Mombasa. She met and married the Respondent a fellow police officer in a civil ceremony on 6th December 2007 at the Registrar’s office in Mombasa. Proof of their marriage is provided by a copy of their marriage certificate serial No. [PARTICULARS WITHHELD]. Their union was not blessed with any children. The couple had their matrimonial home in M[...]. The Petitioner seeks a divorce from the Respondent on the grounds of cruelty.

In cases concerning marriage and divorce the court is guided by S. 6(1) of the Matrimonial Causes Act Cap 152, Laws of Kenya which provides:

“6(1) No petition for divorce shall be presented to the court unless at the date of presentation of the petition three years have passed since the date of the marriage”

In this case the couple celebrated their marriage in December 2007. This petition was filed in court in December 2010 exactly three years from the date of the marriage. I am satisfied that this petition does comply with S. 6(1) of Cap 152 and is properly before this court.

The Petitioner has set out several allegations of cruelty against the Respondent contained in

paragraph 10(a) to (i) of her petition under the heading '*Particulars of Cruelty*'. In her evidence the Petitioner alleges that the Respondent was physically abusive and beat her often as well as being verbally abusive. Cruelty as a ground for divorce is provided for in S. 8b of the Matrimonial Causes Act. The Petitioner states that due to these acts of cruelty she left the matrimonial home in the year 2008 and moved to live in the [PARTICULARS WITHHELD]. For the past two years the couple have not cohabited as man and wife. The Petitioner also alleges that the Respondent was financially irresponsible and did not provide for her upkeep. She further alleges that the Respondent currently lives with a woman named P with whom he has a 5 month old child. The Petitioner's claims have not in any way been disputed or controverted. The Respondent despite being served chose not to reply to the petition. All in all the Petitioner paints a very sad picture of a marriage which has fallen apart. If the couple have not lived together for the past 2 years, then there really only exists a shell of a marriage. The Petitioner could not reasonably have been expected to put up with constant beatings. The fact that the Respondent is now cohabiting with another woman shows that he has effectively moved on and has no interest in his marriage to the Petitioner. On the grounds of cruelty I do allow the present petition for divorce. Decree nisi to issue to be made absolute within a period of three (3) months from today's date.

The Petitioner has in prayer (b) sought to exclude the Respondent from her home and her business premises. Whilst I am satisfied that the first part of prayer (b) is warranted as the petitioner is entitled not to be disturbed or interfered with in the privacy of her home, I find that to bar the Respondent from a public premises would amount to an unwarranted restriction of his civil liberties and his right to come and go as he pleases. I therefore will only grant an order restraining the Respondent from entering or remaining in the Petitioner's houses at [.....]. The second part of prayer (b) is disallowed. It is so ordered.

Dated and Delivered in Mombasa this 20th day of June 2011.

M. ODERO
JUDGE
20.6.2011

In the presence of:
Mr. Mbuya for Petitioner