



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

DIVORCE CAUSE NO.1 OF 2004

O.A.S.....PETITIONER

=VERSUS=

T.G.B.....RESPONDENT

J U D G E M E N T

The Petitioner O.A.S. and the Respondent, T.G.B., are wife and husband. When the Petitioner served the Petition, the Respondent filed a Cross-Petition.

The marriage was celebrated on 14.8.1997 under the Marriage Act at V[...] District Marriage Registry. The parties got one issue, E.J., now said to be 12 years old.

The Petitioner based her petition on alleged cruelty of the Respondent during the marriage. The Respondent on the other hand also averred the ground of cruelty of the Petitioner as well. Both parties did not appear to have kept any reliable record of acts of cruelty from the other party.

It was, however, very clear that the marriage between the Petitioner and Respondent is irretrievably broken down. They separated over 11 years ago and did not show any little interest of coming together now or in the near future.

In the circumstances it would be futile exercise by the court to try to rejoin them. Indeed it would be against public policy to do so since they have each made up their mind to be set free to chart a new course of life.

There is, however, the issue of the child E.J. He definitely needs protection of court. The child has since the year 2000, been living with his mother, the Petitioner. While she claimed that the Respondent sporadically contributed to the welfare of the child, the latter denied such allegation. He said, and his evidence was not seriously denied, that he always paid school fees and bought school requirements for the child. The Petitioner sought Kshs30,000/= as maintenance for the child per month. While the Respondent agreed to carry his responsibility for the child, he nevertheless said he currently had no job while the income of the Petitioner as a high school teacher, should seriously be considered as the basis of the child's source of maintenance.

I have carefully considered the issue of maintenance for the child. I am persuaded that both parties have the responsibility to take care of the child. Their incomes would therefore, be relevant and crucial in deciding the amount payable by either party. Unfortunately each was unwilling to disclose their actual income. This court cannot manufacture such figures by itself.

In the circumstances the court makes the following orders:-

ORDERS

1. The marriage between the parties herein O ASand TGB celebrated on 14.8.1997 is hereby dissolved with a *decree nisi* issuing for 3 months.
2. Either party is at liberty thereafter to apply to court to make the decree absolute.
3. The Respondent, TGB shall monthly pay to the Petitioner for the maintenance of the child E.J., Kshs7000/= (seven thousand) per month with effect from 1st June, 2011 with liberty to either party to apply to court for modification if justified.
4. The Respondent in addition to 3 above, shall pay half the actual school fees payable at E.J's school ascertainable by a certificate to be issued by the Headmaster of the school.
5. Each party to bear own costs.

Dated and delivered at Busia this 16th day of June 2011.

D.A. ONYANCHA

JUDGE.