



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MALINDI

DIVORCE CAUSE NUMBER 3 OF 2011

C.W.M.....PLAINTIFF

=VERSUS=

A.K.L.....RESPONDENT

JUDGEMENT

C.W.M. (the Petitioner) got married to **A.K.L.** (the Respondent under the Marriage Act (Cap 150) on 4th June 2004 at the Registrar of Marriages Office in Malindi and they were issued with a marriage certificate produced as exhibit.

The couple has two children, **V.W.** aged 20 years and **C.K.** aged 6 years. The Petitioner now prays that the union be dismissed and she be granted custody of the children on grounds that the Respondent has proved to be cruel, disrespectful, dishonest and arrogant to the Petitioner during the subsistence of the marriage. Further that since the celebration of the said marriage, the Respondent has been guilty of cruelty, infidelity and negligence. The particulars of cruelty are pleaded as;-

- 1. The Respondent has continually raised false allegations of assault and abuse against the Petitioner causing her anguish and psychological torture.**
- 2. The Respondent assaulted the Petitioner causing her actual bodily harm as a result of which she made a complaint at Watamu Police Station. The Respondent was apprehended and arraigned in court on a charge of assault contrary to section 251 Penal Code in Malindi CMCR No. [.....] R V A.L. on 6th February 2009, (medical report and court proceedings were produced as exhibit.**
- 3. The Respondent has been concocting all sorts of false allegations and claims of neglect and failure of responsibility against the Petitioner, as an excuse for desertion of the matrimonial home and neglecting the children.**

4. Respondent has intentionally and willfully and without any reasonable cause, denied the Petitioner her conjugal rights, an act aimed at frustrating Petitioner.

5. The Respondent has failed, refused and/or blatantly neglected to communicate with the Petitioner, despite the Petitioner`s efforts to meet him and resolve the matter amicably.

The Respondent did not file any answer to the Petition and the same proceeded as an undefended cause C. (Petitioner) described to this court how she first met the Petitioner in March 1999 and they begin living together. They got two children V. born in 1992 and C. born in 2004. They then solemnized their marriage in June 2004 before the Registrar of Marriages. This solemnizing seemed to be the trigger to a changed character in the Respondent who became abusive, insulting the Petitioner saying that she was so desperate; she agreed to solemnize their relationship even without dowry being paid for her. He begun having extra marital relations with other women and if Petitioner dared to question him, he would beat her up and at times she had to sleep at their neighbor`s house to escape the beating. When the beatings got too much, Petitioner suggested that they discuss and resolve the matter before their parents. However Respondent rejected the suggestion saying he had nothing to do with her parents as he had never paid dowry. Petitioner then called her brother-in-law and pleaded with him to talk to Respondent. The Respondent consulted and had discussions with the said brother in law and even said he would go to meet Petitioner`s parents to tell them he had married her.

After a short while, the beatings resumed and Respondent even forbade Petitioner from selling at her grocery shop. Petitioner protested saying given the hard economic times, it did not make sense to sit idle yet the children needed fees and other basic requirements which her income could supplement. Respondent kept telling Petitioner about a teacher in Watamu whom he planned to marry. Respondent`s involvement with so many women worried Petitioner so she suggested that they go for an HIV test but Respondent refused. So she tested alone – the result was negative. Respondent begun waging psychological war on Petitioner by not talking to her and withholding sex, so Petitioner told him it would be better for them to be apart, rather than get involved with each other and end up dying, leaving their children as orphans. So for six (6) months Petitioner slept in the sitting room while Respondent slept in the bedroom.

On 6th February 2009, the Respondent went to Petitioner`s room, beat her up and stabbed her several times with a knife (the scars on her face and shoulder were shown to court). Petitioner reported the matter to police and sought treatment in hospital. The p3 form was produced as exhibit and Respondent was charged in court. Petitioner moved out of the matrimonial home and went to live with her sister. When the couple went before the Children`s Office, Respondent said he did not know those children. Petitioner then sought help from the District Commissioner to provide her security and enable her remove her property from the home but she was provided with APs who were Respondent`s friends. Petitioner was thus only able to take her clothes and decided to leave all her other property to Respondent. She kept the children because respondent had disowned them. The Respondent works as a taxi driver.

The Petitioner`s brother-in-law **K.G.** (PW 2) confirms that C. was married to **A.** and they had two boys. He set up a grocery shop for C. as he realized she was idle – at the time she was living in his house. However in 1999, she met A., moved out and eventually they got married. Pw 2 is married to Petitioner`s sister. He confirmed that C. and A. have had several disagreements, almost every month and on many occasions he intervened and talked to the pair. It was his evidence that in the year 2009, the couple got into full scar war resulting in A. beating C. so badly inflicting injuries on her. It was his evidence that:-

“A. kept monitoring C.`s movement and beating her and she would run and spend the night in my house. A. got so suspicious of C., he would beat her even for just being seen in company of her nephews”

So after the assault Pw 2 cause C to move out. Petitioner moved out and currently lives with Pw 2 and her elder sister in Mtwapa for her own security. Pw 2 states;-

“From Respondent`s conduct, I fear, if C. lives on her own, the Respondent will kill her”

M.M.M.(Pw 3), a businessman in Watamu who has known Petitioner for the last 10 years told this court that Petitioner and Respondent, although married were always at “war”. Respondent would beat Petitioner who would then run for safety and seek accommodation at Pw 3`s home. At times Respondent would bring women to his matrimonial bed and order Petitioner to sleep on the couch – so Respondent would leave the house and seek refuge in Pw 3`s house. When Pw 3 tried to talk to Respondent, he told her not to interfere with his family and as a result Petitioner suffered and became a recluse. Respondent used to threaten Petitioner and curtail her freedom.

The Matrimonial Causes Act provides under section 8 for the inter alia the following as grounds upon which divorce can be granted;-

(1) Adultery

(2) Desertion without cause for a period of at least three years immediately preceding the presentation of the petition

(3) Since the celebration of the marriage treated the petitioner with cruelty

(4) The Respondent is incurably of unsound mind and has been continuously under care and treated for a period of five years preceding presentation of the petitioner

(5) The Respondent has been guilty of rape, sodomy or bestiality

The evidence discloses clearly that Respondent has been cruel to the Petitioner visiting acts of violence on her, resulting in serious physical injuries, and he was infact charged in court. The acts and incidences of cruelty as narrated by the Petitioner are confirmed by Pw 2 (her brother-in-law) who has had to intervene frequently, and even advised her to move out of the matrimonial home because he feared for her life.

Petitioner`s evidence finds corroboration in the evidence of Pw 3, (a neighbour) who has often times accorded her refuge whenever the situation at home deteriorates. As a matter of fact the couple no longer cohabits. From my analysis of the evidence, the Petitioner has proved cruelty visited on her repeatedly by the Respondent – who not only physically assaults her, but also wages psychological war such as deliberately refusing to talk to her and willfully withholding or denying her conjugal rights. She has satisfied one of the grounds under section 8 of the Matrimonial Causes Act whereupon divorce can be granted and her petition is merited.

Consequently the union between Petitioner and Respondent is hereby dissolved. A decree *nisi* to issue and be made absolute upon expiry of six months.

As regards custody of the children`s V. was born in 1992 according to his mother, and he is now 19 years old. He has attained the majority age and can make a decision who he wants to live with and where. C. was born in 2004 – he is now 7 years old, currently living with Petitioner, Respondent has not

demonstrated any interest in having custody of the child, and it is in his best interest that his settled environment remains uninterrupted. I therefore grant custody of C. to the Petitioner.

Delivered on 14th June 2011 at Malindi.

Each party shall bear its own costs.

H A OMONDI
JUDGE