



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

DIVORCE CAUSE NO. 55 OF 2010

A. Y. D. S.....PETITIONER

=VERSUS=

S. M. H. V.....RESPONDENT

JUDGEMENT

This is the petition of one **A. Y. D. S** by which she prays that:

“(a) THAT the marriage between the Petitioner and the Respondent be dissolved.

(b) THAT each party bear his/her own costs of this cause.

(c) Any further or other relief that this honourable court may deem just and fit to grant to the Petitioner in the circumstances”

The petition and summons to enter appearance were duly served upon the Respondent **S. M. H. V** on 27th January 2011. He failed to file any response thereto and the matter proceeded as an undefended cause.

In her evidence the Petitioner told the court that she and the Respondent first underwent a marriage in accordance with Islamic rites on 24th September 2004. The certificate No. [.....] was produced as an exhibit **Pexb1**. Thereafter the couple underwent a civil marriage ceremony on 25th September 2004. That certificate serial No. [.....] was also produced in court as an exhibit **Pexb2**. After their marriage the couple lived with the Respondent’s family in their home in Tudor. The Petitioner told the court that their union was blessed with one child – a daughter **A. S. V** who is now 4½ years old.

The law relating to statutory marriages and dissolution thereof is to be found in the Matrimonial Causes Act Cap 152 Laws of Kenya. S. 6 (1) of the said Act provides:

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

The Petitioner and the Respondent solemnized their union in September 2004. The present petition was filed in court on 26th November 2010 a full six (6) years **after** the marriage. I am therefore satisfied that this petition complies with S. 6(1) of Cap 152 and is properly before the

court.

In her petition the Petitioner alleges in paragraph 7:

“7 THAT since the celebration of the marriage the Respondent has treated the Petitioner with cruelty and caused the Petitioner mental anguish and suffering”

The *‘particulars of cruelty by the Respondent’* are set out in paragraphs 7(a) to 7(d) of the Petition. These include the following:

“(a) The Respondent has on several occasions treated the Petitioner with hostility, threats, harassment and intimidation.

(b) The Respondent has refused to have any communication with Petitioner save when issuing threats and abuses.

(c) The Respondent has on several occasions abused the Petitioner.

(d) The Respondent has denied the Petitioner conjugal rights”

In her evidence before the court the Petitioner narrated how the Respondent would scream and abuse her in front of colleagues and workmates. She further states that the Respondent would refuse to eat her food and throw the food at her face in the presence of house guests. Lastly the Petitioner claims that the Respondent declined to sleep with her for over 1½ years claiming that she was no longer desirable to him. All this caused the Petitioner low self esteem leading to distress and led her to suffer depression. The couple finally separated in September 2010.

Cruelty as a ground for divorce is recognized by the law in S. 8(1) (c) of the Matrimonial Causes Act which provides:

**“8(1) A petition for divorce may be presented to the court by either the husband or the wife on grounds that the respondent –
(c) has since the celebration of the marriage treated the petitioner with cruelty”**

This cruelty does not refer to physical cruelty by way of assault alone. There is recognized physiological or emotional abuse which equally causes extreme hardship to a spouse. The Petitioner says the Respondent would berate and abuse her in public. He would decline to eat her food and throw it at her face. He refused to sleep with her saying he no longer desired her. There is no evidence to controvert what the Petitioner has told the court and I as a court have no reason to doubt the veracity of her evidence. For one spouse to treat the other in the manner in which the Petitioner alleges to have been treated by the Respondent, does in my view amount to cruelty in the extreme. One cannot be expected to continue living with such an abusive spouse. Indeed **PW1** told the court that the couple have already secured a divorce under Islamic Sharia Law. This Divorce Certificate No. [.....] was produced as an exhibit **Pexb3**. **PW1** also told the court that their parents and friends have tried to intervene in an attempt to reconcile them but to no avail. It is clear that this marriage has irretrievably broken down. The parties have agreed that custody of the infant child be vested in the Respondent with visitation right granted to the Petitioner. This is evidenced by the deed of settlement dated 1st February 2011 **Pexb4**. It appears that nothing remains other than to legally end this unhappy union. I am satisfied that the ground of cruelty has been proved and I do hereby allow a dissolution of the marriage. Decree nisi to issue to be made absolute within three (3) months of today's date. No orders as to costs.

Dated and Delivered in Mombasa this 8th day of June 2011.

M. ODERO

JUDGE

In the presence of:

Mr. Mushelle holding brief for Ms. Osino for Petitioner