



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI
DIVORCE CAUSE NO. 3 OF 2007

A.G.G.....PETITIONER

VERSUS

C.G.M.....RESPONDENT

JUDGMENT

The subject matter of this judgment is the Petition dated 18th June 2007. In the aforesaid petition, A.G.G, the Petitioner herein, sought for the marriage between her and CGM the respondent herein, to be dissolved and to be given the custody of the minor child. The Petitioner relied on two main grounds namely:

- (i) Adultery and
- (ii) Cruelty

The Petitioner gave the particulars of the aforesaid grounds in her Petition. The Petition was duly served upon the Respondent who did not deem it fit to file a response as expected of him. The court granted leave to the Petitioner to prosecute her Petition *ex parte* when the Respondent also failed to attend court.

A.G.G (P.W.1) told this court that she got married to the Respondent on 17th April 1985. She produced in evidence as an exhibit the certificate of marriage as proof. The marriage certificate shows that the couple's marriage was solemnized at the office of the Registrar of Marriages, Nairobi under the Marriage Act. P.W.1 stated that they initially lived in Nairobi before moving to settle at Nanyuki township. She also stated that their marriage was blessed with three children namely:

- (1) S.M - 31 years.
- (2) R.M - 24 years.
- (3) N.K - 16 years

P.W. 1 said that she is a nurse while her husband is a mechanic. The Petitioner urged this court to issue orders dissolving their marriage mainly on the ground of cruelty. She enumerated the particulars of cruelty perpetuated on her by the Respondent to include *inter alia*:

- (i) That the Respondent was a habitual drunkard.
- (ii) That the Respondent has denied her conjugal rights.
- (iii) That she has constantly been assaulted by the Respondent.

- (iv) That the Respondent does not materially maintain nor , provide for her and the children.
- (v) That the Respondent has abused her in public in the presence of the children and family members.

She told this court that they have lived separately since 2005. She was of the view that the marriage has irretrievably broken down. She alluded that several attempts have been made to rescue the marriage in vain.

I have considered the one sided evidence without the benefit of the other side i.e. the Respondent. The main ground relied upon by the Petitioner is that of cruelty. The Court of Appeal in the case of **Wangari Mathai =Vs= Mwangi Mathai [1980] K.L.R. 154**, restated the standard of proof in matrimonial offences at page 157 as follows:

“.....the standard of proof requisite to establish the commission of a matrimonial offence, the safe and proper direction should be that the court must be satisfied beyond reasonable doubt or satisfied so as to feel sure that cruelty has been proved.”

The question is whether or not the evidence tendered in this case established the offence of cruelty to the aforesaid standard? I have already stated that the evidence tendered is one sided. I observed the demeanor of the Petitioner as she testified and I formed the view that she was a truthful witness who was consistent in her evidence. Perhaps the most serious allegations which tend to establish the offence of cruelty are basically threefold:

First, that the Respondent has denied the Petitioner conjugal rights. Secondly, that the Respondent has failed to provide for the Petitioner and the children. Thirdly that the Respondent has verbally abused and physically assaulted the Petitioner in the presence of the children. In my view and in the absence of any evidence to contradict those tendered by the Petitioner, I have no reason to doubt the veracity. I am convinced that the Petitioner has proved her case to the required standard in matrimonial causes. I hereby grant the orders sought in the Petition. A decree nisi to issue and to be made absolute within a period of 3 months. Costs of the Petition to be paid by the Respondent.

Dated and delivered at Nyeri this 3rd day of June 2011.

J. K. SERGON
JUDGE

In open court in the presence of Mr. Chweya for the Petitioner No appearance for the Respondent.