

IN THE HIGH COURT OF KENYA

AT NAIROBI

DIVORCE CAUSE NO. 55 OF 2010

J.T.NPETITIONER

Versus

C.M.M.RESPONDENT

JUDGMENT

This is a divorce petition on the grounds of cruelty and adultery. The parties married on 3rd October 2003 at the Registrar of Marriages Office in Nairobi. They thereafter live and cohabited at Kilifi and have been blessed with two issues.

On the ground of cruelty the Petitioner avers in her petition that in 2005 and May 2009 the Respondent issued death threats against her and in September 2008 he warned her that they would both “lose” their children if the Petitioner attempted to end the marriage. Since 18th November 2008 the Respondent has denied the Petitioner the use of the family car forcing her and the children to use alternative transport. On 31st January 2009 the Respondent physically assaulted the Petitioner and the matter was reported at Kilifi Police Station.

On adultery the Petitioner avers that when she visited the Respondent in Germany she suspected that he had an affair with another woman. In October 2008, the Petitioner received information that the Respondent was having an affair with one Loventer Opiyo, a student at Mombasa Polytechnic. On 31st January 2009 the Petitioner caught the Respondent with the said Loventer Opiyo in the act of adultery in their matrimonial home and the Respondent assaulted her. Efforts to resolve the matrimonial problems were futile and the Petitioner was driven to vacate the matrimonial home. On 16th May 2010 she filed this petition.

Though served the Respondent did not enter appearance or file an answer to the petition. Consequently the Petitioner took directions and fixed this cause for formal proof.

In her testimony in court the Petitioner basically reiterated the above averments. She said she lives and works in London while the Respondent lives and works in Mombasa.

I have considered the above averments and the Petitioner’s testimony. Having lived apart since November 2008 I am satisfied that the marriage between the Petitioner and the Respondent has irretrievably broken down. In the circumstance I grant this petition and hereby dissolve the marriage between the parties. A decree nisi shall issue forthwith to be made absolute after 30 days. The Petitioner shall continue having the custody of the children of the marriage. The Respondent having not contested this petition I make no orders as to costs.

DATED and delivered this 15th day of July 2011.

**D.K. MARAGA
JUDGE**