



REPUBLIC OF KENYA.
IN THE HIGH COURT OF KENYA

AT KITALE.

DIVORCE CASE NO. 8 OF 2008.

R.N.N.:..... PETITIONER.

VERSUS

S.S.W.:..... RESPONDENT.

J U D G M E N T.

1. R.N.N. petitioned for the dissolution of the marriage with S.S.W. (respondent) which was solemnized on 29th June, 1984 at the Registrar's Office at Nairobi. After marriage both parties cohabited in Nairobi, Nakuru and at K[...]area in Kitale. There are 3 issues of the marriage but as at the time of the hearing of this petition, the three children had attained the age of majority. The petitioner complained that since the celebration of the marriage, the respondent treated her with cruelty and cited several incidences where the respondent assaulted her and threatened to kill her with the children.

2. According to the petitioner one such incident of assault occurred on 9th June, 1999. The petitioner sustained bodily injuries from the assault and she was treated at the Provincial General Hospital, Nakuru. The petitioner produced a treatment card in evidence. Another incident was on 9th March, 2004 when the petitioner met the respondent's girlfriend on the way to their farm in C[...] and she was assaulted by the respondent's girlfriend. Since the petitioner was already travelling to Nakuru, she decided to continue with the journey and was treated at Provincial Hospital in Nakuru. The parties have been separated since the year 2005. The respondent demanded to be given the original title document for the piece of land in Kitale, but the petitioner said she did not have them at the time, for that reason the respondent assaulted the petitioner.

3. This assault was reported to the police, and the respondent was charged with the offence of assault before Kitale Chief Magistrate's Court. According to the petitioner, the respondent was tried and convicted on 21st May, 2010. Upon conviction he was sentenced to pay a fine of Ksh. 20,000/= or 6 months imprisonment. Apart from physical violence, the petitioner complained that the respondent neglected his parental responsibilities, of providing maintenance to the children of marriage. The petitioner testified that she has single handedly supported the 3 children while the respondent refused to work after he lost his job. He ran a business that the petitioner had helped him start into losses and finally closed it down.

4. The disharmony between the petitioner and the respondent was also a subject of reconciliation before the parents of the respondent without any success. According to the petitioner, the respondent has also been engaged in an adulterous relationship with a woman called A.N.K. and upon confrontation by the

petitioner, the respondent admitted the existence of the relationship but he promised to bring it to an end after which both parties entered into a memorandum of understanding before an advocate by the name **Mr. Kidiavai**. However, the problems persisted and the parties separated in 2005 and each has been living separately.

5. The respondent filed an answer to this petition and also cross petitioned for judicial separation. The respondent denied the allegations of cruelty, neglect and adultery. The respondent accused the petitioner of placing a caution over the property known as Sinyerere/Sitatunga Block [.....]28 which has prevented the respondent from accessing a loan to do business. The respondent also gave evidence and stated that when he lost his employment he made several efforts to secure an alternative employment without success. He started a business called Sinyerere Agencies where he derived an income which he also used to support the children. The respondent blamed the petitioner for taking his academic documents and the title deed thus making it impossible for him to apply for employment or to secure a loan.

6. Both parties filed written submissions, according to the petitioner, she was able to prove the particulars set out in the petition that she was treated with cruelty by the respondent, the parties have also not cohabited together since 2005 and both parties have gone different ways thus the court should grant an order dissolving the marriage. On the part of the respondent, his counsel filed written submissions and urged the court to only grant an order of dissolution, as regards the order of custody, he submitted that the children of marriage have already attained the age of majority. Counsel was of the view that since the respondent cross petitioned for separation he should be granted the orders.

7. I have evaluated the evidence before this court regarding the marriage between the petitioner and the respondent as well as the pleadings. It is clear from the evidence by both the petitioner and the respondent that they stopped living together as husband and wife since 2005. Going by their demeanors' in court, it was evident that there exists a lot of tension between the two which was characterized by emotional outbursts. It is also clear from their evidence that there are irreconcilable differences which are deep. There has been violence that was reported to the police by the petitioner. The petitioner also produced evidence to show she was subjected to physical violence and as a result she sustained injuries.

8. The parties have been to police stations and in one incident the respondent was charged with the offence of assault. The petitioner was also able to prove that she has single handedly provided for the children of the marriage. She has paid their school fees and the respondent did not show any evidence of supporting his own children. Taking the totality of the evidence before the court, I find that the petitioner has been able to prove the allegations that she was subjected to systemic cruelty by the respondent and these matters were reported to the police. Moreover the parties have been separated since 2005 thus the marriage between the petitioner and the respondent is irretrievably broken down due to acts of cruelty perpetrated by the respondent.

9. I find the petitioner has not colluded with the respondent to bring this petition. Accordingly, I grant the order that the marriage between the petitioner and the respondent be dissolved. A decree *nisi* shall issue for a period of 3 months and if no application is made it shall be made absolute. Since all the children of the marriage are of the age of majority, there is no need to grant an order of custody.

This being a family matter, it is appropriate that each party should bear their own costs.

Judgment read and signed this 8th day of July, 2011.

**MARTHA KOOME.
JUDGE.**