



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET

DIVORCE CAUSE NO. 17 OF 2010

W.M.....PETITIONER

VERSUS

M.N.W.....RESPONDENT

JUDGMENT

On 23rd June 2006, the Petitioner, **W.M**, was lawfully married to the respondent, **M.N.W.** , in a ceremony conducted at the Uasin Gishu District Commissioner's office under the Marriage Act (Cap. 150 Laws of Kenya).

A Marriage Certificate (P. Ex. 1) was to that effect issued on the same day. Thereafter, the couple lived and cohabited at L Estate Eldoret Town and were blessed with a son **M.W.K** born on the 11th May 2007.

The cohabitation continued upto the 4th April 2010 when the respondent moved out of the matrimonial home after an argument over her behaviour.

The Petitioner alleges that the respondent since the celebration of the marriage and during its subsistence treated him with cruelty and engaged in adultery with men unknown to him.

For those reasons, the Petitioner now beseeches this Court to dissolve the marriage. He avers that with regard to the issue of the marriage there are maintenance proceedings in progress before a Children's Court.

The respondent did not file any answer to the petition.

Under S. 8 (1) of the **MATRIMONIAL CAUSES ACT (CAP 152 LAWS OF KENYA)**, a petition for divorce may be presented either by a husband or a wife on the ground that the respondent has since the celebration of the marriage treated the petitioner with cruelty or has committed adultery.

This petition is grounded on the two factors i.e. cruelty and adultery.

In the case of **N VS. N & ANOTHER (2008) 1 KLR (G&F)**, the High Court (Madan J., as he then was) held that whether cruelty as a matrimonial offence has been established is a question of fact and degree which should be determined by taking into account the particulars individuals concerned and the particular circumstances of the case rather than by any objective standard.

It was further held that the law does not require or wait for tangible manifestation of cruelty before granting relief.

Herein, there is allegation by the petitioner that the respondent has been cruel to him. The particulars of cruelty are said to be that the respondent is a woman of ungovernable temper and has habitually insulted and neglected the petitioner.

It is also said that the respondent has on several occasions used abusive language towards the petitioner and that she is a habitual liar, confrontational and hostile.

In his testimony, the petitioner (PW 1) stated that he has been separated from the respondent since the month of April 2010. He said that he has been subjected by the respondent to physical confrontations, attacks and embarrassment. There is no dispute to these allegations which on the outset confirm and establish that indeed the respondent has been cruel to the petitioner.

On adultery, it was held in N Vs. N (Supra) that to prove adultery, it is not necessary to have direct evidence of the same. Association coupled with opportunity, illicit affection, undue familiarity and guilty attachment are some of the instances which create an inference upon which the Court can act.

The particulars of adultery enumerated herein by the petitioner include that the respondent on several occasions received phone calls from her lovers during odd hours of the night, immediately after marriage one A called the petitioner and threatened him to stay away from the respondent who was allegedly his (A) wife. On 14th March 2010 the respondent received a phone call from a lover identified as Isaiah and on 3rd April 2010 in a family meeting, the respondent admitted having extra marital affairs and was not apologetic about it.

These allegations are more or less confirmed by the petitioner's testimony. He added that soon after their marriage, the respondent infected him with a venereal disease which allegedly came from her lover A.

The totality of the allegations hereinabove does indirectly provide evidence which is relevant and compelling to raise strong inference that the respondent engaged in acts of adultery with known and unknown male species.

It may therefore be safely stated that the petitioner has established grounds upon which a marriage may be dissolved. He is thus entitled to the relief sought.

In any event, as held in N Vs. N and another (Supra), if two spouses have reached the point of not being

able to live together reasonably happily for causes some of which may appear trifling to an outsider but are of vital effect upon their lives and which are felt by them to be intolerable or unreasonable to continue to bear then they are entitled to be released from matrimonial union.

In sum, this petition is merited. A decree nisi shall issue forthwith and be made absolute after the expiry of the set statutory period. Each party to bear own costs of the petition.

Ordered accordingly.

J. R. KARANJA
JUDGE

[Delivered and signed this 6th day of October 2011]