



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA Divorce Cause 50 of 2009

F.M.....PETITIONER

VERSUS

J.T.....RESPONDENT

JUDGEMENT

The Petitioner **F.M** filed this petition on 11th September 2009 seeking orders:-

“THAT the marriage solemnized between the Petitioner and the Respondent on 20th April 2000 be dissolved, a DECREE OF DIVORCE NISI to be issued”

Notice to appear was duly sent to the Respondent **J.T** at his last known address in Germany as is proved by the affidavit of service sworn by **G.E** on 17th November 2009. The Respondent neither entered appearance nor filed a reply to the petition. The matter therefore proceeded before me as an undefended cause on 9th December 2009.

The Petitioner in her evidence told the court that she and the Respondent got married on 20th April 2000 at the Registrar’s Office in Mombasa. She produces a copy of their marriage certificate as evidence of this fact **Pexb1**. After the marriage the couple moved to live in Germany. However problems arose as the Respondent did not want the Petitioner to communicate with her family in Kenya nor to send financial support for her daughter. After two weeks the Respondent sent the Petitioner back to Kenya. They reconciled and within a few months she returned to Germany. The same problems arose and once again the Petitioner packed up and returned to Kenya. As before the Respondent began to call her seeking a reconciliation but the Petitioner this time declined. From 16th May 2001 the couple have not cohabited and indeed have not seen each other. There was no issue of the marriage.

The couple celebrated their marriage on 20th April 2000. This divorce petition was filed in court on 11th September 2009. This is

about nine (9) years **after** the marriage. I am satisfied and do find that this divorce petition complies with S.6(1) of the Matrimonial Causes Act Cap 152 Laws of Kenya which 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.”

This petition is therefore properly before this court.

The Petitioner relies on the ground of **“cruelty”** in support of her petition for divorce. She narrates in her evidence how upon going to Germany with the Respondent he sought to ban her from communicating with her family in Kenya or from sending financial help for her daughter who had remained in Kenya. To expect a mother to cut ties completely with her child and to expect a daughter to cut all ties with her family was in my view unreasonable at the very least and certainly cruel at the worst. This expectation that the Petitioner live in total isolation would undoubtedly subject her to emotional trauma. No person is an island. All humans require some sort of filial and emotional ties for their well being and emotional stability. The Petitioner did leave Germany and came back to Kenya due to disagreements over this issue. The couple reconciled and she returned to Germany. The same problems arose again so barely two weeks after arriving in Germany she again departed back to Kenya. The evidence of the Petitioner has not been controverted in any way. This kind of ping-pong existence is no way to conduct a marriage. The demands being made on the Petitioner by the Respondent were in my view unreasonable and cruel and could not be adhered to.

I note that since 16th May 2001 the couple have neither seen each other nor cohabited. The Respondent’s lack of interest in sustaining this marriage is clear from his lack of interest in defending this petition. There is no doubt that this is a marriage which has irretrievably broken down. It serves no purpose for the court to insist on holding together a shell of a marriage which the parties themselves have no interest in sustaining. I am satisfied that the ground of cruelty has been sufficiently proven. On that basis I do hereby allow this present petition and allow this divorce. Decree nisi to issue to be confirmed within six (6) months.

Dated and Delivered in Mombasa this 18th day of February 2010.

M. ODERO
JUDGE

Read in open court in the presence of:

Ms. Odhiang holding brief for Mr. Wabwoto for Petitioner.

M. ODERO
JUDGE
18/2/2010