



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Divorce Cause 178 of 2001

G.M.M..... PETITIONER

-VERSUS-

V. M.M..... RESPONDENT

JUDGMENT

Before me is a petition dated 15th October, 2001 filed by M/s. L Wahome & Company advocate on behalf of the petitioner named as **G.M.M.** The respondent is named as **V.M.M.**

Registrar of Marriages in

It is stated in the petition that the petitioner and the respondent are husband and wife married on 27th January 1986 at the office of the Nairobi. Filed with the petition is a certified copy of an entry of marriage issued on 19th June 2001. It is also stated that there are three children of the marriage. Regarding the marriage, it is alleged that the respondent has been guilty of cruelty and adultery. Particulars of cruelty and adultery were given in the petition. In the petition, the following reliefs are sought from the court:-

- a) The marriage between the petitioner and the respondent be dissolved.**
- b) The petitioner do have full custody and control of the children of the marriage with reasonable access to the Respondent.**
- c) The respondent do pay costs of the cause herein.**

The respondent filed an answer to the petition through her counsel A.M. Wahome & Company advocate. The respondent denied that she is a business woman, but stated that she is a housewife who was in charge of all family construction and rent collection from the family rental houses. She admitted being a trained tae kwon do, holding three belts, but denied assaulting the petitioner or being cruel to him. She denied committing adultery and claimed that the petitioner himself had committed adultery. She stated that the couple had acquired land assets during the marriage, which she listed and asked for the following reliefs:-

- a) Custody of the children of the marriage be granted to the respondent.
- b) The petitioner be ordered to pay reasonable upkeep and maintenance and school fees for the children and the respondent.
- c) Settlement of matrimonial property be made between the respondent and the petitioner.

On the hearing date neither the respondent nor her counsel attended court.

Only the petitioner **G.M.M** testified.

It was the evidence of the petitioner that they initially got married to the respondent customarily in 1978. In 1984 the two celebrated a civil marriage at the Attorney General's office in

Nairobi. The respondent had a child before marriage. The two got two children during the subsistence of the marriage. It was his evidence that his wife has been cruel to him and the children, and had deserted him. From 1996

she shifted to a different bedroom and denied him sexual intercourse. She had also committed adultery with another man with whom she is cohabiting at Kariobangi.

I have considered the documents filed and the evidence placed before me. In my view cruelty has been proved. I also find on the evidence on record that adultery has been proved. Though the respondent filed a reply to the petition, she did not bother to come to court and testify to support her contentions with evidence. I discount her story and disbelieve her.

I find that the marriage has broken down irretrievably. The orders on maintenance and division of property can be sought in a proper cause filed on that account. I will grant the prayers in the petition of the petitioner.

Consequently, I allow the petition and order as follows:-

- a) The marriage between the petitioner and the respondent is hereby dissolved. I issue a decree nisi for divorce to be made absolute after the lapse of six months.**

- b) The petitioner will have full custody and control of the children of the marriage with reasonable access to the respondent.**

- c) Parties will bear their respective costs.**

Dated at

Nairobi this 4th February, 2010.

George Dulu

Judge

In the Presence of :-

Mr. Omondi Mbago for the Petitioner.

Mr. David Mutisya Court Clerk