

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET
Divorce Cause 12 of 2008

E.N.W.....PETITIONER
VERSUS
A.A.....RESPONDENT

JUDGMENT

The Respondent and the Petitioner solemnized their marriage on the 8th of January 2000 at the A[Particulars withheld]Worship Centre. Thereafter they cohabited and resided at Eldoret and the union was blessed with two issues aged 8 years and 5 years as at the time of instituting the proceedings herein in October 2008.

The wife is the Petitioner herein. She prays for dissolution of their marriage on the grounds of desertion, cruelty and adultery stating that the marriage is beyond salvage and the same should be legally terminated. On cruelty the Petition states that she has been assaulted by the Respondent on several occasions leading to her seeking medical attention. That the Respondent is a quarrelsome person who used to shout at the Petitioner attracting and annoying their neighbours and this caused mental anguish to the Petitioner. That the Respondent never maintained the Petitioner and the children of the marriage and eventually deserted them. That the Respondent had several adulterous relationships with different women as a result of which he infected the Respondent with sexually transmitted diseases. The Petitioner then prays for the dissolution of the marriage and for the custody of the children.

The Respondent was served with the Petition. He neither entered appearance nor filed an answer. At the hearing the Petition reiterated the contents of the Petition adding that the Respondent and herself have lived apart since December 2003 when the Respondent chased her and the children away saying that their marriage was never peaceful the Petitioner produced in evidence a P3 form and treatment chit that she received after being beaten by the Respondent, she added that her husband infected her with HIV during the pregnancy of their second child. Further evidence was that numerous negotiations have yielded no results and the marriage cannot be saved. She prayed for the custody of the two children of the marriage.

I have taken into consideration the Petition and the adduced evidence and the exhibits produced. The Respondent chose not to defend the petition and hence all that the Petitioner has adduced goes unchallenged. And I find as a fact that she has proved cruelty through the production of medical treatment notes and the P3 form issued to her following a beating from her husband. She said that they have lived apart for nine years and still counting. That is prove of desertion by the Respondent who chased the family away from the matrimonial home. The allegation that she was infected with HIV by her husband due to his adulterous lifestyle goes unchallenged and is clear proof of adultery on the Respondent's part. In my consideration this marriage exists only in the certificate of marriage. And as that document is a bitter relic to the Petitioner of her life with the Respondent, the same serves no useful purpose. All the ingredients for dissolving a marriage have been proved. Accordingly I order this marriage dissolved for having broken down irretrievably.

There will be a decree nisi for three months.

DATED AND DELIVERED AT ELDORET THIS 4TH DAY OF MARCH, 2010

P.M.MWILU
JUDGE

IN THE PRESENCE OF:-

Paul Ekitela - Court clerk
Mrs. Cheptinga - Advocates for Petitioner.