



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
Divorce Cause 10 of 2009

M N.....PETITIONER

VERSUS

J M N.....1ST RESPONDENT

Z W.....2ND RESPONDENT

J M.....3RD RESPONDENT

D N W.....4TH RESPONDENT

JUDGMENT

The petitioner has withdrawn this petition against the 2nd, 3rd and 4th respondents.

In her petition filed on 16th February 2009, M N (hereinafter “*the petitioner*”), seeks dissolution of her marriage to her husband J M N (hereinafter “*the respondent*”) on the grounds of cruelty and adultery. In her particulars of cruelty, the petitioner states, among other things, that the respondent has since the celebration of their marriage treated her with cruelty in that (i) in 2004, the respondent caused her to be thrown out of their matrimonial home and never bothered to attend to her despite the fact that the petitioner had been involved in a life threatening road traffic accident; (ii) the respondent has frequently physically struck the petitioner; (iii) the respondent has verbally and physically abused the petitioner; (iv) the respondent has never provided for or supported the petitioner and (v) the petitioner lives in absolute fear of the 1st respondent who has continually threatened the petitioner with harm.

With respect to the ground of adultery the petitioner avers that the respondent has since the celebration of their marriage committed adultery with several women: (i) In 1991 the respondent had extra marital affairs with W, F, W, R, P, D, H, T, J and their house maid; (ii) between 1999 and 2000, the respondent had an extra-marital affair with another woman which affair, was adjudicated upon by the church without success; (iii) the respondent even entertained one H in the matrimonial house while the petitioner was away; (iv) the respondent frequently infected the petitioner with sexually related diseases; (v) between 2001 and 2006 the respondent cohabited with one J M and (vi) the respondent frequently committed adultery with girls of the age of his daughter.

In the petition, the petitioner states that they are blessed with three (3) children namely (a) N N born on 21st December 1986, (b) M K born on 14th February 1991 and (c) L M, M's twin sister. The couple lived and cohabited in Voi and M M in Kwale in Coast Province.

When the respondent was served with the petition he did not file an answer to the petition. The petition therefore proceeded ex-parte before me on 4th March 2010. She testified that she first got married to the respondent under Customary Law but later their marriage was registered after a church wedding in 1996. A marriage certificate was issued but was kept by the Respondent. They later constructed a matrimonial home at M. They were blessed with the children stated in the petition.

They lived together happily until 1989 when they started experiencing problems. The respondent, after the said year, adopted a loose moral character and had numerous extra-marital relations with many women stated in the petition. Some of the women including F and W have since passed on. One day the respondent was got with a woman by their first born child who was traumatized.

The petitioner continued that, as a result of those extra marital affairs of the respondent he infected her with sexually transmitted diseases. Consequently, she declined any sexual relations with the respondent in 1998. The couple were intimate very infrequently thereafter and in 2001 sexual relations came to an end. That is also the year the petitioner had a serious road traffic accident but the respondent never visited her or looked after her after her discharge from hospital.

The respondent also never paid school fees for any of their children one of whom is now an adult and the last borns are in college.

The petitioner was in the premises convinced that her marriage to the respondent cannot be saved and the respondent's desire is to destroy her. In this regard, he has sold several family properties and is in the process of selling the Matuga house.

Having considered the evidence adduced before me, I find and hold that the respondent has since the celebration of his marriage treated the petitioner with cruelty. The various open extra-marital sexual relations with numerous women subjected the petitioner to mental assault. The extra-marital sexual relations resulted in the petitioner being frequently infected with sexually transmitted diseases. The petitioner lives in fear of the respondent. In those premises, the petitioner has proved the matrimonial offence of cruelty.

The petitioner's testimony of the adultery of the respondent has not been controverted. That evidence is that the respondent commits adultery with named and unnamed women including girls of the age of the couples first born. Indeed the frequent infections of sexually transmitted diseases visited upon the petitioner, in my view, attest to the adultery alleged against the respondent. I therefore find and hold that the petitioner has proved the ground of adultery to the required standard.

In the end, I have come to the conclusion that the marriage between the petitioner and the respondent has irretrievably broken down and is hereby dissolved. Decree Nisi shall issue forthwith and the same shall be made absolute after the statutory period.

The children are now adults and I need not make any order regarding their custody.

The respondent shall pay the costs of this petition.

Orders accordingly.

DATED AND DELIVERED AT MOMBASA THIS 20TH DAY OF APRIL 2010.

F. AZANGALALA

JUDGE

Read in the presence of:-

Oruko for the Petitioner.

F. AZANGALALA

JUDGE

20TH APRIL 2010