



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Divorce Cause 47 of 2006

C.R.MPETITIONER

versus

M.M.M..... RESPONDENT

JUDGMENT

C.R. M, who is the petitioner in this cause, prays that her marriage of six years to **M.M.M** ('the respondent') be dissolved on account of cruelty, and it is her ground that her husband has since the celebration of their marriage treated her with cruelty causing her exceptional hardship and mental anguish, which treatment, she has not been accessory to, connived or condoned.

The two who had been living together for three years got married on 16/6/2004, and have no children.

The respondent however denies the allegations and states that it is his wife who has been cruel to him, has frustrated him and his hopes of living happily in their marriage, which he hopes can be salvaged.

She claims that her husband denied her conjugal rights and the two have not resumed cohabitation since July 2005, when she left the matrimonial home.

According to the respondent, they would quarrel over issues pertaining to money, maintenance of their home and her personal hygiene, and that they had a stormy and tense relationship. He felt embarrassed on several occasions when he had to borrow money from her to enable him foot entertainment bills. He denies her allegation that he denied her conjugal rights, but conceded that he had reservations because of her personal hygiene. It was his evidence that she failed to groom herself. He therefore blames her for the breakdown of the marriage.

I am guided by section 8 (1) (c) of the Matrimonial Causes Act wherein it is provided that:

"(1) A petition for divorce may be presented to the court either by the husband or the wife on the ground that the respondent –

(a) has since the celebration of the marriage committed adultery; or

(b) has deserted the petitioner without cause for a period of at least three years immediately preceding the presentation of the petition; or

(c) has since the celebration of the marriage treated the petitioner with cruelty; or

(d)

In furtherance thereto, in a cause where the petitioner alleges cruelty, it is for her to satisfy the court, and she is indeed under an obligation to prove her case on a balance of probabilities, and thereby to establish that there *'existed a misconduct of a grave and weighty nature; that there was real injury to his health or reasonable apprehension such injury; that the injury was caused by misconduct on the part of the respondent, and that the conduct amounted to cruelty in the ordinary sense of that word'* (**Meme vs. Meme [1976] K L R 13**).

I have considered the pleadings as well as the evidence on record, and I find that the petitioner has been able to show that her husband started treating her with cruelty within a few hours of the ceremony, when he asked her whether the marriage was a mistake. She testified how she spent her wedding night in the parking lot where she cried a lot. She testified how he never acknowledged the marriage; and though she told her relatives of the wedding he never informed members of his family of the marriage; he introduced her to very few of his friends, and he preferred to create the impression that they were not married; he even removed his wedding ring which he chose to wear on his middle finger soon after the marriage. He denied their relationship and in her view, he behaved more like a room-mate and not a husband, and though he paid the rent and had been very generous before the wedding, he otherwise refused to provide for her after the wedding and preferred to make her share bills. She had to meet her medical bills. She felt like a stranger for she had to initiate discussions and would sleep at the edge of the bed cuddled in a ball, which made her feel very lonely and demoralized.

In my humble opinion, though the respondent would urge this court to find in his favour, I am of the view that he treated his wife with a lot of cruelty, which led to her suffering a lot of mental anguish and anxiety. The question that comes to mind is; which wife would be expected to continue living in the matrimonial home under such conditions? He cannot now be heard to claim that she is guilty of desertion.

In my view, having lived with her for three years prior to their marriage, the issue of her personal hygiene is just but an afterthought and I do disregard it. He expected to have his cake and eat it, a situation which cannot hold.

She has been able to prove cruelty on a balance of probability, and I do in the circumstances find in her favour and grant her an order for dissolution of her marriage to the respondent. A decree nisi shall issue forthwith. Either party shall be at liberty to apply after six months.

The respondent shall bear the costs of the suit.

Dated and delivered at Nairobi this 8th day of July 2010.

JEANNE GACHECHE

Judge

Delivered in the presence of:

For the petitioner – Mrs. Kalsi

For the respondent – Mr. Chahenza