



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
DIVORCE CAUSE NO. 11 OF 2008

C.C..... PETITIONER

VERSUS

J.M.K..... RESPONDENT

J U D G M E N T

The Petitioner for orders dissolving the marriage solemnized on 24.11.2001 is the wife. She alleges in her Petition for divorce that since the marriage was solemnized the respondent and the Petitioner lived together at K Estate Eldoret. She further alleges that her husband deserted the matrimonial home in 2005 after the couple had been blessed with two issues, a son and a daughter. The said petition states that the Respondent was guilty of cruelty and adultery in that he had been physically violent to the petitioner, is a philanderer who occasionally shows off his girlfriends to the wife causing her mental and undue emotional stress and discomfort. The Respondent does not pay bills for the family and poisons the minds of the children of the marriage against the petitioner calling her a Kalenjin. The particulars of adultery given are that the Respondent has a mistress called L W with whom they have two children born in 1998 and 2007 and as at the time of filing for divorce the Respondent was living with yet another woman called M in Kitale. The petitioner states in her petition that she has neither condoned nor connived in the matters complained of and has not presented the Petition in collusion with the respondent.

The Respondent never entered an appearance and similarly never filed an Answer.

At the hearing of the Petition the Petitioner gave evidence that she and the respondent initially married under custom and later on 24/11/2001 they formalized their union by solemnizing it at the District Commissioner's Office at Eldoret. She produced the marriage certificate. She also produced photocopies of the birth certificates of the two issues of the marriage saying that the Respondent husband had the originals. She said that they had a troubled marriage as the respondent was very adulterous and used to beat the Petitioner without cause. One time when she complained of one of the respondent's girlfriend, the Petitioner was beaten and nearly strangled causing her to call the husband's parents to resolve the issue to no avail. On another occasion she was beaten until she had to report the matter to the police. She produced a P3 form. She produced a court order against the husband restraining him from physically hurting the Petitioner. She said that the respondent was adulterous and had an open relationship with one L.W since 2004 which resulted in birth the of two children with the said L.W in 1997 and 2007. She gave evidence that this was very painful as L was their family friend. L was also discarded and the respondent now lives with yet another woman called M in Kitale. She said that the husband had refused to support the family and she wanted a divorce.

The Petitioner's counsel's written submissions said that grounds for the grant of an order for divorce were proved and the marriage should now be dissolved.

It is evident from the petition, which was not controverted by an Answer or a Cross – Petition, that indeed this was a troubled marriage. The husband chose not to respond to the various not flowery allegations against him. I take them as uncontroverted and therefore true. All the Petitioner needs to do is to prove a matrimonial offence and in this case her unchallenged evidence has proved adultery, cruelty and desertion. This marriage has irretrievably broken down on all counts. The petitioner prays for custody of the two issues of the marriage. There is no challenge to that prayer. Further, the said issues

have always lived with the petitioner who has provided for them. These coupled with their ages, they were born on 29/8/1990 and 2/3/1998 respectively, makes the petitioner earn the orders sought. I grant custody to the Petitioner.

I find in the circumstances of this case that there is nothing left of the marriage and do hereby order the same dissolved. A decree nisi shall immediately issue and which shall be made absolute after the expiry of three (3) months. Each party shall bear its costs.

DATED SIGNED AND DELIVERED AT ELDORET THIS 15TH DAY OF DECEMBER 2010.

**P.M. MWILU
JUDGE**

In the presence of;

Advocate for Petitioner

Absence of Respondent

Court Clerk

**P.M. MWILU
JUDGE**