



REPUBLIC OF KENYA

IN THE HIGH COURT

AT MALINDI

DIVORCE CAUSE NO. 11 OF 2009

F.C.....PETITIONER

VERSUS

G.M.N.....RESPONDENT

JUDGEMENT

F.C (the Petitioner) has filed his divorce cause against G. M. N (The Respondent) praying that the marriage between her and the respondent which was solemnized on 20th September 2006 be dissolved.

The parties married under the Marriage Act as per the Marriage Certificate provided as Exhibit 1. After the celebration of the marriage, they cohabited in Watamu, Kenya. There are no issues to the union.

Since the celebration of the marriage, the respondent has been guilty of adultery with one E.C.M, with whom he has sired 2(two) children, E.M.N and R.M.N.

It is her contention that when the respondent proposed marriage to her in September 2006, it was on the understanding that it was a monogamous union and petitioner believed the respondent's representation that he was single and not married to any other person.

On 11/4/07, the petitioner discovered that respondent was leading a double life as he had relations with E.C.M and had sired two children E aged 7 years and R aged 1 ½ years at the time. Petitioner orders she has not connived or condoned the adultery complained of.

In answer to the petition, the respondent confirmed having lawfully married the petitioner but denies being guilty of adultery as alleged. It is his answer that, petitioner deserted him in the year 2008 and went to live with one J in Watamu with whom she had sexual relations for about a month, and thereafter she befriended one man with whom she has been living for almost a year and the petitioner is even pregnant with the said Man's child, so it is respondent who has been adulterous.

The respondent is however opposed to the dissolution of the union and prays that this petition be dismissed.

The matter proceeded ex parte. The petitioner narrated how after getting married to the respondent, she discovered that he actually had a wife, E.C.M, and that by the time respondent was entering into a marriage with petitioner, E was expecting the respondent's second child.

She testified, how she used to see E in Watamu and she would hear claims that respondent was having an affair with her. So petitioner visited E at her place of residence and met E, who confirmed to her that G (Respondent) was the father of the child she has and she showed petitioner the child's birth certificate which reflected the respondent's name as the father. E however explained that she had agreed with respondent that petitioner could continue living with him because in so doing he would be able to get money from the petitioner to provide for their needs. Upon hearing of this, petitioner went back to her house, packed all the respondent's clothes in a bag and put them outside her house. From that day, they have not lived together. She told this court that if she had known he had another wife, she would never have married him.

Under the Matrimonial Causes Act, one of the grounds on which a marriage can be dissolved is adultery. Petitioner has shown that respondent has had a relationship with a known married woman, with whom he even has children. He failed to attend court to controvert these claims and I accept this as true.

He alleged adultery on the petitioner upon but did not attend court to offer evidence proving those claims, "consequently I accept petitioner's evidence as proof of her claim as this was a statutory marriage under the marriage Act (Cap 150) which contemplates a monogamous union and even if E accepted the petitioner as a co-wife, that still offended the statutory norms. Therefore the marriage qualifies to be dissolved by granting the petitioner the divorce she seeks and I so grant.

I order that respondent bears costs of this petition.

A decree nisi to issue and be made absolute after six months.

Delivered and dated this 15th day of **December 2010** at Malindi.

H. A. OMONDI
JUDGE

Mr. Ole kina for petitioner