



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
DIVORCE CAUSE NO. 12 OF 2006

T.K.K..... PETITIONER

VERSUS

J.S..... RESPONDENT

J U D G M E N T

The Petition for the dissolution of the marriage celebrated between the petitioner and the respondent under the African Christian Marriage and Divorce Act Cap 151 of the Laws of Kenya in 1993 is brought by the husband on allegation of cruelty, desertion and adultery.

The petitioner gave evidence that the respondent was cruel to the petitioner, the issues of the marriage and to the petitioner's parents and that she severally neglected her matrimonial duties, was disrespectful to the petitioner which has caused the petitioner extreme mental anguish and agony.

On desertion he gave evidence that the respondent deserted the matrimonial home in 2004 while the petitioner was away in the United States of America and has never gone back.

On adultery he said that the respondent gave birth to a child during 2005 while the petitioner was out of jurisdiction and currently the respondent cohabits with a man in Nandi Hills. He prayed for dissolution of the marriage and left the issue of custody of the children to court.

The Respondent entered appearance and filed what she styled "Reply to Petition" in which she said that it was the petitioner who deserted the respondent and the issues of the marriage after the birth of the 2nd child. She alleged further that the petitioner was cruel and obstinate and that their marriage was not irreparable and beyond salvage. She did not attend court, though served, and so her allegations were not substantiated by evidence.

I have evaluated the evidence by the Petitioner. On the onset let me state that the respondent herself stated in her "Reply to Petition" that the Petitioner deserted the matrimonial home after the birth of the 2nd child. She thereby agrees with the petitioner that he was not responsible for fathering the 3rd child whose existence the respondent did not deny. That an unmitigated admission of adultery.

The respondent did not attend to prove desertion as she alleged. On the other hand the petitioner gave evidence on oath that it was the respondent who during 2004 deserted the matrimonial home never to return. I believe him. Desertion on the part of the respondent I find is proved.

The particulars of cruelty on the part of the respondent towards the petitioner were not given in evidence so as for the court to determine whether or not such conduct as was complained of amounted to disrespectful cruelty. To my mind cruelty must be proved against a party in the marriage and not to third parties unless it can be shown that cruelty was meted out to the parents of the petitioner and his children to the knowledge of the petitioner and this caused him "reasonable apprehension of danger" see **MEME V MEME 1975(KLR)13**.

The grounds of desertion and adultery are found to be proved and upon the same I do hereby pronounce a dissolution of the marriage between the petitioner and the respondent. The Respondent has always had the custody of the issues of the marriage. No reason was given for me to disturb that order of things. I order therefore that she will retain custody. The Petitioner gave evidence that he is willing to

continue paying fees and for other needs for their children. He will continue to support his children. Decree absolute shall issue immediately as these parties have lived apart since 2004 and no useful purpose will be served by continuing to tie them together only on paper while in real lives they exist separately from and independently of each other. Each party shall bear its own costs.

It is so ordered.

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

**P.M. MWILU
JUDGE**

In the presence of;

Advocate for Petitioner

Court Clerk

**P.M. MWILU
JUDGE**