



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MALINDI

DIVORCE CAUSE NO. 9 OF 2009

S.M.G.....PETITIONER

-VERSUS-

D.J.M.....RESPONDENT

JUDGEMENT

S.M.G (the petitioner) filed this divorce cause against D.J. M (respondent).

The couple married under the African Christian Marriage Act (Cap 151) on 27th February 2004 at the ACK Church, [particulars withheld].

They cohabited in Kisauni in Mombasa and Dabaso, in Malindi and had two issues namely S.S.M (aged 14 years) and B.M.M (aged 8 years). During the marriage, the respondent subjected petitioner to cruelty by physically assaulting her, resulting in petitioner leaving the matrimonial home and going to live in the staff houses at T[particulars withheld] where she works.

Further that respondent has on several occasions embarrassed the petitioner by going to her work place and causing disturbance after he has drunk alcohol, his aim being to cause petitioner's sacking. Attempts to reconcile the parties from the church and their respective parents has not borne fruit and the petitioner states she has not condoned cruelty in any manner. As a result of the respondent's conduct, the marriage has broken down irretrievably and respondent prays the same be dissolved and that a decree nisi do issue. She prays that respondent be condemned to bear the costs of this cause.

In answer, the respondent opposes dissolution of the union saying the petitioner has fabricated all the allegations she makes. He states that once petitioner settled in her job, she became hostile and begun using insubordinate language to the respondent, and upon being warned about her behavior she left the matrimonial home and went to live at her place of work so as to get the freedom she wanted. He denies beating or ill treating petitioner, saying she has not made any report of assault of any kind to his parents as would be the tradition.

He describes her behavior as not pleasing in the environment as a married woman and she made the

petitioner to feel isolated. Further that if he had caused any harassment at her place of work, the hotel's security personnel would have reacted.

He confirms that their differences have been the subject of discussions with his father, saying petitioner had the habit of going out with beach operators, she had even confessed her unbecoming conduct to both the church minister and respondent, and even sought forgiveness and they forgave her. Further to this, the petitioner was advised to keep away from the management and staff while out on official duty and conduct herself with decorum as a married woman.

However Petitioner's conduct didn't change and he says that despite all what he alleges, the union should not be dissolved nor should she be given custody of the children. He also wants the court to order petitioner to leave her employment.

The hearing proceeded ex-parte as respondent failed to attend court although he had been served. Petitioner told this court that she works at T[particulars withheld], Watamu as a hotel manager. They married in 2004, when she was already in the hotel industry – which meant that she would sometimes work during odd hours, and whenever she got home late, she would find the respondent upset and he would always ask her why she was late. Whenever she attempted to explain, the respondent would be violent and beat her up, calling her a prostitute. The matter was initially referred to her in-laws and her parents to try and resolve it, but within 3 days they were back to fighting each other. They sought help from the church but not much changed and the beatings continued. It is her evidence that they are not compatible as they are always fighting and petitioner says she does not wish to live with respondent any more. She alludes to threats by respondent to kill her, and that is what led to her moving out of the matrimonial home and seek refuge at the staff quarters.

On being cross-examined by court she stated that she no longer loves the respondent at all and that by the nature of her works she will always get home late, and respondent will continue with his harassment and beatings. She told this court that her attempts to explain to the respondent her work schedule just drew disbelief from respondent, who would say she was just creating excuses so as to go and meet her men friends.

It was her testimony on cross-examination by the court that whenever she reported the assaults by respondent to police, they would turn her away saying those were domestic matters which should be solved at home. She never sought any treatment for the assault. She refers to instances in July and September 2009, when respondent went to her place of work intending to beat her, and he had to be restrained by the hotel's security personnel. She states that they have multiple disagreements and she even moved out three times and returned to the matrimonial home on those three different occasions after respondent would plead with her to go back but after a while, they would be back to fighting. Even their best couple's attempts to help them failed. She says the children are in boarding school, but live with her whenever schools close. She has no objection to their father having reasonable access to them. She explains that they got the children long before they formalized their union.

The petitioner has demonstrated that they seem to have irreconcilable differences which even from the respondent's answer stems from the fact that she is working – in fact he prays that petitioner be ordered to stop working. She is in the hospitality industry which has odd working hours, which means for as long as she is working, those differences will forever remain. The misbehavior respondent refers to was not proved as he failed to attend court to offer evidence. He has no qualms saying that he doesn't wish her to work and insinuates impropriety by virtue of her interaction with other staff. All attempts at resolving their differences have hit a rock and really there can be no reason to insist that the two continue living together which it is apparent the marriage has broken down irretrievably. Consequently, I allow the dissolution of the union.

There is nothing to suggest that the children live with respondent, so I will allow that they continue living with the petitioner. Respondent is at liberty to propose a visiting programme so as to give him access and interaction with the children.

Decree Nisi to issue and be made absolute after six months.

Petitioner shall bear the costs of this petitioner.

Delivered and dated this **9th** day of **December 2010** at Malindi.

H. A. Omondi
JUDGE

Read in open court, parties absent.