

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

Divorce Cause 7 of 2007

EA..... PETITIONER

-VERSUS-

CRJ..... RESPONDENT

JUDGMENT

Coram:

Mwera Judge

Odhiambo Owiti Advocate for the Petitioner

Respondent in person present

Dianga CC.

The petitioner brought these proceedings against her husband praying that their marriage celebrated on 19.6.2004 be dissolved on account of gross cruelty, desertion and neglect. Particulars set out alleged that the respondent on several occasions used to return home drunk, and on no grounds picked quarrels with the petitioner. In 2006 the respondent committed adultery with a minor and from that time the petitioner constructively deserted the matrimonial home while the respondent went off to live in Tanzania. He has since not maintained the petitioner. Thus the marriage should be dissolved and costs given to the petitioner.

The respondent was served with the petition and he filed a “defence” generally denying the allegations set out in the petition. The registrar issued a due certificate and when the day of hearing the petition came, it was demonstrated to the court that the respondent had been served. He did not show up and the hearing proceeded *ex – parte*.

The petitioner told the court that when the two married at a church in Kisumu (Exh P1), they started off well, living near the home of the respondent in Kuria land. But later the respondent would go out to preach, seemingly he was a pastor, but return home drunk whereupon he would pick quarrels with the petitioner. He beat her and chased her about with a panga. Then one day in August 2006 the petitioner was summoned to a local primary school, K, and informed that the respondent had raped a girl at that school. When the petitioner put this claim before the respondent, he instead told the petitioner to leave their home since she was childless. She left and returned to her relatives while the respondent, who was later defrocked went away to live with another woman he claimed he married. He did not return to the matrimonial home or maintain the petitioner – hence these proceedings.

Having heard the evidence of the petitioner, which was not controverted, this court is satisfied that the respondent treated the petitioner with cruelty and is guilty of constructive desertion since August 2006 to date. He ordered her to leave his home and he went to live elsewhere away from the matrimonial home. Cohabitation was never resumed and accordingly the marriage herein is dissolved as prayed, with costs to the petitioner.

Decree **nisi** to issue followed with decree absolute in the usual way.

Judgment delivered on 27.5.2009.

J. W. MWERA

JUDGE

JWM/hao