



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET(ELDORET LAW COURTS)

Divorce Cause 6 of 2008

MBMS:.....PETITIONER

VERSUS

LS:.....RRESPONDENT

J U D G E M E N T

The Petitioner married the Respondent on 23.12.2001 at Baraton University in Nandi district under the African Christian Marriage and Divorce Act cap.151 of the Laws of Kenya. She has now filed for divorce citing desertion, adultery and cruelty on the part of the Respondent. Her case is that the Respondent deserted the Petitioner during 2001 soon after the celebration of the marriage. Her further case is that she has visited the Respondent in the United States of America on two occasions since the celebration of the marriage for periods of one month on each occasion and the Respondent has treated the Petitioner with cruelty the particulars of which are using vulgar and abusive language to her, has denied her conjugal rights and has totally failed to recognize the Petitioner as his wife, among several other particulars of cruelty. The Petitioner says that the Respondent has extra marital affairs.

The Respondent was served with the petition through substituted service and neither entered Appearance nor filed an Answer.

At the hearing the petitioner reiterated her petition and added that her husband left her three weeks after the wedding and save for two visits by the Petitioner to the Respondent the two have lived apart since the year 2001. Her evidence was that even during those visits the Respondent treated the Petitioner as though she were a stranger. The Petitioner stated that she found out that the Respondent had another family in the USA, no names of the family members were given. The court is left with the word of the Petitioner against no other's word.

Expounding on the ground of desertion by the Respondent the petition gave evidence that the Respondent deserted her in 2001 and went to the USA where he lived with his other family. Even allowing for the two months visit by the Petitioner the Petitioner stated that the parties have totally lived apart since 2004. That is a period in excess of three years as at 9th May 2004 when the Petition was presented.

On the evidence of the Petitioner on desertion I find that the parties have lived apart since 2004. The Petitioner's evidence that it was the Respondent who deserted her is not contradicted and in the absence of evidence to the contrary I believe the Petitioner and hold that the Respondent deserted the Petitioner. Indeed it is only the Petitioner who visited the Respondent at the USA twice. No mention was made of the Respondent visiting the Petitioner in her country. I hold therefore that the ground of desertion is proved.

That the Respondent treated the Petitioner with cruelty is the Petitioner's word. Closely connected to the ground of desertion that I have found is proved is the element of cruelty of abandoning the Petitioner to fend for herself and denying her conjugal rights. These two, for the reasons given for desertion, I find are proved. There were no particulars given on the Respondent's selfishness, vulgarity, wild and ungovernable temper and these are not proven beyond their mention in the petition.

What is proved in totality is that the marriage has broken down, indeed irretrievably. I agree with the Petitioner that there is a marriage on paper but in effect there is none. It is that marriage on paper that the Petitioner wants dissolved.

On the available evidence by the Petitioner I find and hold that the marriage between the parties herein has irretrievably broken down and I hereby dissolve the same. There will be a decree nisi for three months.

Orders accordingly.

DATED AND DELIVERED IN OPEN COURT IN ELDORET THIS 13th DAY OF MAY, 2009.

P.M.MWILU

JUDGE

IN THE PRESENCE OF:

Paul Ekitela - Court clerk

Present in person - Petitioner