

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MOMBASA

Divorce Cause 54 of 2008

N. K.S.....PETITIONER

VERSUS

M. N. S.....
.....RESPONDENT

JUDGMENT

In his petition filed on 18th August 2008, N.R.S, (hereinafter “the petitioner”) seeks dissolution of his marriage to his wife, M.N.S (hereinafter “the respondent”) on the grounds of cruelty and desertion. In the particulars of cruelty, the petitioner states that the respondent hates him and frequently insulted him without reason. She indeed evinced a desire to terminate the marriage when she deliberately induced a miscarriage of their child. With regard to desertion, the petitioner states that the respondent left the matrimonial home on 21st August 2006 and has since refused to resume cohabitation and is instead married to another person in India.

The respondent has filed no answer to the petition and did not attend the court when the petition came up before me for hearing on 20th May 2009. The petition therefore proceeded ex parte. In his oral testimony in court, the petitioner stated that he married the respondent on 21st June 2005 in Mombasa under the Marriage Act (Cap 150 Laws of Kenya). He produced exhibit 1, a Marriage Certificate, as evidence of the marriage. He further stated that they resided and cohabited in Nyali Estate in Mombasa since the celebration of his marriage. Their marriage was however unhappy as the respondent frequently insulted him and hurled dirty words at him and his family. In August 2006, the petitioner invited her relatives to their matrimonial home and in their presence stated that she wanted to terminate the marriage and go to India. The petitioner testified that at the time, the respondent was pregnant and she announced in the presence of her relatives that she would abort the pregnancy. She then left the petitioner to her relatives’ home in Kisii and later traveled to India. While in India, the respondent sent the petitioner a document indicating that the marriage be terminated. The said document was produced as Exhibit 2. The respondent later terminated her pregnancy and is now married to another man in India. The petitioner further testified that the conduct of the respondent was cruel and has mentally affected him. He therefore contends that their marriage has irretrievably broken down and should be dissolved.

Having considered the evidence adduced before me, which evidence was not controverted, I am satisfied that the petitioner has established the ground of cruelty. The frequent abuses and insults of the respondent and the termination of her pregnancy are clearly acts which amount to matrimonial cruelty.

With regard to the ground of desertion, I note that the respondent left the petitioner in August 2006. She has not therefore been in desertion for three (3) years. The ground of desertion has in the premises not been proved. One proved ground is however sufficient to found an order for dissolution of the marriage and the petitioner has proved matrimonial cruelty against the respondent. There is also the document the petitioner received from the respondent from India (Exhibit 2) which, in my view, clearly demonstrates that the marriage between the petitioner and the respondent has irretrievably broken down. The marriage, the subject matter of these proceedings is accordingly hereby dissolved. Decree Nisi shall issue forthwith and the same should be made absolute one month thereafter.

I make no order as to costs.

DATED AND DELIVERED AT MOMBASA THIS 19TH DAY OF JUNE 2009.

F. AZANGALALA

JUDGE

Read in the presence of:-

Mrs. Adogo for the Petitioner.

F. AZANGALALA

JUDGE

19TH JUNE 2009