



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT KERICHO

Divorce Cause 1 of 2008

R K BPETITIONER

VERSUS

M C R RESPONDENT

JUDGMENT

I: Procedure

1. In a matrimonial cause where parties seek a divorce or judicial separation the file must at all times be placed before the Registrar to certify by way of a certificate that the proceedings and pleadings are in order.
2. A certificate was issued on 12th June, 2008 but there is fact was no certificate extracted by the Deputy Registrar. The pleadings as it stood was defective in many ways and wanting.

II: Background

3. The petitioner herein gave evidence to court that he married the respondent in December, 2003. He produced no marriage certificate and in effect stated that he married the Respondent at the Registry in Kericho. His pleadings reflected that the marriage was under the Christian Marriage and Divorce Act.
4. This Act latter Act deals with the conversion of an African Customary Law marriage to a Christian marriage in church.
5. The petitioner claimed that he took his bride home but was not able to sleep with her in the same house as he had not gotten his own house and as a result according to customary law, he could not be with her.
6. The respondent left. She did not return until December, 2004 when she stayed for a week only.
7. In his pleadings, the petitioner relied on the claim under Section 8 of the matrimonial causes act on the heading of cruelty. The particulars of cruelty though was in fact desertion, the other particulars in **Section 8** namely –
 - i. He had been denied his conjugal rights
 - ii. Petitioner was deserted by the respondent

- iii. The respondent is unpredictable and nags.
- iv. Spends her income on herself when he was jobless.
- v. She was abusive to the petitioner and his parents
- vi. That she committed adultery.

8. With this in mind, the plaintiff sought for a divorce.

9. The respondent in reply stated that when she married the petitioner he was first to speak with her family. He did not do so. A ceremony that was set up for him to come home failed. The petitioner had no intention to make the visit and he appears not to be serious. She never cross petitioned for a divorce.

III: Findings

10. The said divorce suit has a petition that claims the respondent deserted the petitioner. **Section 8(b)** requires that there be three (3) clear year of desertion. In his evidence the petitioner said that they were married on December, 2003. The petitioner returned on December, 2004 he filed suit in 2008.

11. As to the issue of adultery. **Section 8(1) (a)** the law requires that a co petitioner must be named to prove adultery. (**Section 9(1)**) no co petitioner was named.

12. As to the issue of cruelty, this court finds it hard to comprehend that the applicant petitioner was a dependant of the respondent. A man's responsibility is to maintain his wife and child. If he is not able to do so he should never be married.

13. The said petitioner relied on the wrong act to come to court.

14. I further state and note that the said Respondent did not cross appeal or name the co petitioner who may have committed an adultery with petitioner. I accordingly find that the ingredient mentioned herein has not been proved. This divorce cause is accordingly dismissed with no orders of cost to the parties.

DATED this 9th day of June, 2009 at **KERICHO**

M.A. ANG'AWA

JUDGE

Advocates

J.K. Kirui advocate instructed by M/S J.K. Kirui & Co. advocates for the Petitioner – present

S.K. Chelule advocate instructed by M/S Chelule & Co. advocates for the Respondent – present