



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT MOMBASA(MOMBASA LAW COURTS)

Divorce Cause 7 of 2008

DWF.....PETITIONER

VERSUS

NDF.....RESPONDENT

JUDGMENT

In his petition filed on 11th February 2008, DWF, (hereinafter “the petitioner”) seeks dissolution of his marriage to his wife NDF (hereinafter “the respondent”) on the grounds of cruelty, adultery and desertion. In the particulars of cruelty, the petitioner states that the respondent has denied him conjugal rights. With respect to adultery, the petitioner states that the respondent lives with another man called SP and with regard to desertion, the petitioner states that the respondent has since 10th May 2005 deserted the matrimonial home and has not resumed cohabitation with the petitioner.

In the petition, the petitioner states that they are blessed with one child JF who lives with the respondent. The couple lived and cohabited in Germany and Mombasa.

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 15th May 2009. The petition therefore proceeded ex-parte. In his oral testimony in court the petitioner stated that he married the respondent on 21st November 2003 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 on 24th March 2004 they were blessed with the said child of the marriage. After the birth of the said child, the respondent took to drinking alcohol. The petitioner further testified that in April 2005 they traveled from Germany to Kenya for a holiday and when they were due to go back to Germany the respondent did not join him and the petitioner traveled alone to Germany. Since then the respondent has not resumed cohabitation.

The petitioner further testified that the respondent lives in different places and at one time she lived with one SP. The petitioner further testified that it is now over four (4) years since the respondent left him and efforts to reconcile have not borne any fruits. In the premises, the petitioner contended that, his marriage to the respondent has irreparably and irretrievably broken down and should be dissolved and he be allowed access to his daughter.

Having considered the evidence adduced before me, which evidence, was not controverted, I am satisfied that the petitioner has established all the three grounds of cruelty, adultery and desertion. The respondent has denied the petitioner his conjugal rights which act in my judgment amounts to matrimonial cruelty. The respondent also lived with one S P which is clear evidence of adultery. With regard to the ground of desertion, the respondent left the petitioner in April 2004 and was by the time of lodging this petition in desertion of the petitioner for nearly four (4) years. I therefore find and hold 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 to be made absolute after the statutory period.

With regard to the custody of the child JF, I order that in view of her young age, she remains in the custody of the respondent. The petitioner shall however have access over the weekends during the months of March, April, May, November, December and January.

Each party shall bear his/her own costs.

DATED AND DELIVERED AT MOMBASA THIS 5TH DAY OF JUNE 2009.

F. AZANGALALA

JUDGE

Read in the presence of:-

Mwakisha holding brief for Ms. Okumu for the Petitioner.

F. AZANGALALA

JUDGE

5TH JUNE 2009