

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

Divorce Cause 128 of 2006

JMM. PETITIONER

VERSUS

ZSMM. RESPONDENT

J U D G M E N T

The Petitioner JMM and the Respondent ZSMM entered into a marriage between them on 23rd June, 2001 at J[particulars withheld]Club Ngong Race Course Nairobi. Their marriage certificate is No. herein marked as exhibit I. They cohabited as husband and wife in Nairobi until 10th October, 2005 when the Respondent left their matrimonial home, not to return.

Evidence on record admitted by both spouses' shows that the Petitioner in 2003 joined an intercessory denomination cult which the Respondent did not understand and was not willing to appreciate. Despite her objection to the Petitioner continuing to be a member, the latter refused to quit. Both admit that communication between them became strained. They barely talked. The Respondent in the process denied the Petitioner sexual intercourse. The Petitioner admitted he sometimes came home late while the Respondent alleged that lateness was rampant.

It is on record that the Respondent requested the Petitioner to abandon the new religion in vain. On the other hand the Petitioner as well persuaded the respondent to join him in the new religion but also in vain. It is in evidence that it became so difficult for the two to communicate that it led to the Respondent to desert their matrimonial home.

Either side blames the other for treating the other with cruelty. But clearly, either party is to blame although the Respondent finally is the one who abandoned the couple's matrimonial home and later refused to return or reconcile unless the Petitioner abandoned the new religion.

Both parties testified on oath and I have carefully considered their evidence on record. As earlier indicated both parties carry a share of the blame. The main result however, is that their marriage became the victim of their joint behaviour. It had broken down completely when the Respondent decided to leave the matrimonial. Although from the evidence neither party did enough to revive the marriage, nevertheless little of it really remained. It had become irretrievable.

In the above circumstances neither the spouses nor society can benefit from the two spouses being left together as husband and wife. Public policy would demand they be separated so that either can start to chart a new course in life. That is what the court will do in the following orders: -

ORDERS

1. The marriage entered between the Petitioner JMM and the Respondent ZSMM on 23rd June, 2001 is hereby ordered dissolved.
2. A decree nisi shall forthwith issue for three months with liberty to each spouse to apply to make it absolute.
3. There will be no order as to costs.

Dated and delivered at Nairobi this 4th day of June, 2009.

D A ONYANCHA

JUDGE