



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

Divorce Cause 44 of 2008

P.M.N..... PETITIONER

-VERSUS-

A.M.K.....

RESPONDENT

JUDGMENT

The petitioner moved the Court by petition dated 13th August, 2008 seeking an order for the dissolution of the marriage between him and the respondent.

It was pleaded that the petitioner, on 28th August, 1993 married the respondent at a ceremony held at C[particulars withheld] Social Hall in Mombasa, and they were duly issued with a certificate of marriage under the African Christian Marriage and Divorce Act (Cap.151, Laws of Kenya). The couple thereafter cohabited as man and wife at Migadini, Mombasa until sometime in the month of August, 2004 when the respondent deserted the matrimonial home, and has since not returned. During the period of cohabitation, the petitioner and respondent begat two children, *T.N.M* (born in 1994) and *J. N. M* (born in 2000).

The petitioner contends that during the subsistence of the marriage, the respondent has subjected him to cruelty, adultery and desertion, which acts “have made life unbearable for the petitioner”.

The petitioner has listed the particulars of alleged cruelty, which include –

- (i) *respondent being nagging, quarrelsome and hostile to the petitioner in the run-up to her desertion;*
- (ii) *respondent being disrespectful to the petitioner, often using abusive, offensive and degrading language that “left the petitioner hurt and emotionally drained”;*
- (iii) *respondent while at home, refusing to open the door to the petitioner and raising alarm describing him as a thief, so that the petitioner had to sleep elsewhere;*
- (iv) *respondent depriving the petitioner of conjugal rights, especially during times of financial stress to petitioner;*
- (v) *respondent, sometime in 2000, staying away from the matrimonial home for five days, without good cause;*
- (vi) *respondent, in August 2004 deserting the matrimonial home taking with her the children of the marriage, and all the household goods;*
- (vii) *respondent threatening to kill the children of the marriage and then commit suicide, if the petitioner would attempt to take them away.*

On the allegation of adultery, the petitioner particularized that the respondent has had adulterous associations and committed adultery with men known or unknown to the petitioner. It was stated that the respondent has been having an affair with one *M. K* and this took the form of a relationship of cohabitation both in Mombasa and at a rural home called *T*, during the 2004-2005 period.

The alleged particulars of matrimonial wrongs, it was contended, have caused the petitioner “severe stress, mental anguish and untold psychological and emotional harm”, and are a signal of “glaring irreconcilable differences [showing that] the marriage has irreparably and

irretrievably broken down”.

It was pleaded that the petitioner had not connived at or condoned the respondent’s cruelty, adultery and desertion; and that the petition had not been presented or prosecuted in collusion with the respondent or any other person who may be interested in a divorce.

Moved by the petitioner’s Chamber Summons application of 27th January, 2009 brought under Rule 29 of the Matrimonial Causes Rules, the Deputy Registrar on 5th June, 2009 certified the pleadings to be proper and complete; and on that basis learned counsel *Mr. Jumbale* led his client through the evidence on 19th August, 2009.

P.M. N, the petitioner, testified that she had married the respondent, who filed no papers and made no appearance, on 28th August, 1993 at C[particulars withheld]Social Hall in Mombasa (Marriage Certificate No. [particulars withheld] dated 28th August, 1993). The couple later had two children, in accordance with the specific information set out in the pleadings. The petitioner is at present separated from the respondent, who left the matrimonial home in 2004 of her own accord, took the children of the marriage and the effects of the household, and did not return.

It was the petitioner’s testimony that the respondent, after she left the matrimonial home, went into consortium with, and into the household of another man, by name *M.K*, with whom she lived in a certain house, before they relocated together elsewhere.

The petitioner testified that the respondent had treated her harshly in word and deed, had issued threats against her, had accorded her no respect, and the two “were living like man-and-man inside their house”. The petitioner testified that she had not lived with the respondent from the time she left home, that he had had no involvement in the new relationship between her and the said *M.K*, and that there had been no collusion between him and his estranged wife in aid of this divorce cause.

Learned counsel *Mr. Tindika*, in his submissions, urged that the petition as pleaded, had been established by evidence, and that it showed a course of cruelty, desertion and adultery, committed by the respondent. Counsel urged the Court to adopt the evidence that the petitioner’s cause is not compromised by any condonation or connivance or collusion; and so the petitioner deserved the Court’s *decree nisi* of divorce.

The petitioner’s case is clearly stated in the pleadings, and the same is validated by the testimony which is uncontroverted and which, in my assessment, bears the mark of candour and *bona fides*. I hold the testimony to be a true account, and to provide proof for the petitioner’s cause.

On that basis, I hold that the petitioner’s case succeeds. I grant the decree *nisi* of divorce as prayed, and the same may be made absolute upon a motion by the petitioner. The respondent shall bear the costs of the petitioner.

DATED and DELIVERED at MOMBASA this 23rd day of September, 2009.

J. B. OJWANG

JUDGE

Coram: Ojwang, J.

Court Clerk: Ibrahim

For the Petitioner: Mr. Tindika

Respondent unrepresented