



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MALINDI

Divorce Cause 8 of 2003

M.BPETITIONER

VERSUS

K.K.N.....RESPONDENT

JUDGMENT

M.B filed this petition dated 28th August 2003 against K.K.N on the same day for dissolution of the marriage.

The petitioner's marriage to the respondent was conducted at the District Registrar's office at Mombasa, under the provisions of the Marriage Act (Cap 150) Laws of Kenya. A certificate of marriage was consequently issued by the presiding Registrar on 25th February 2003.

Subsequently, the petitioner and the respondent commenced cohabitation as husband and wife within Malindi District.

Both the petitioner and the respondent, at the time of filing the petition and answer to petition, have been domiciled in Kenya for a period of 3 years prior thereto. There are no issues of the marriage.

The petitioner seeks dissolution of the marriage on grounds of cruelty as particularized in paragraph 8 of the said petition. Upon being served with a copy of the petition and notice to appear, the respondent duly entered appearance together with the answer to petition. In his said answer to petition, the respondent prayed for dissolution of the said marriage on the grounds of adultery. That the marriage has irretrievably broken down due to the petitioner's continued adultery with one W.M

In his testimony, the petitioner's evidence is that the respondent has exhibited traits of cruelty, disrespect and arrogance to the petitioner.

In particular, in September 2002 the respondent developed indifference and distasteful feelings towards the petitioner, on unjustified suspicion that the petitioner was having an affair with another man. That the respondent has since the celebration of the said marriage denied the petitioner her conjugal rights whenever the respondent wishes. In the month of September 2002, the respondent left the matrimonial home. In January 2003, the respondent suddenly without any reasonable or probable cause deserted the matrimonial home all together.

In the year 2003, the respondent filed High Court Separation [Cause No WITHHELD] at Malindi but subsequently withdrew the same. That all said and done, the petitioner's marriage to the respondent has irretrievably broken down. That the petition is not presented or prosecuted in collusion with the respondent. She prayed *inter alia*, for dissolution of the marriage and costs incidental to the petition.

The respondent, K.K.N testified that he has been a caring husband to the petitioner. He has never been cruel, disrespectful and arrogant to the petitioner and/or refused to grant the petitioner the conjugal rights as alleged or at all. The respondent admitted having filed the Malindi High Court Separation Cause and subsequently withdrew the same on 11th August 2003. The respondent maintained that the said marriage has irretrievably broken down due to the petitioner's adultery. Though he did not file cross-petition, he prayed for dissolution of the marriage and asked for costs.

I have carefully considered the testimony of the petitioner and the respondent. I have equally enquired into the grounds of divorce – cruelty as contained in the petition.

It is clear to me that the petitioner and the respondent marriage was solemnized under and in accordance with the provisions of the Marriage Act [Cap 150] Laws of Kenya.

I am satisfied that there has not been any collusion between the petitioner and the respondent in presenting or prosecuting the cross-petition. Equally, I am satisfied that there has not been any unreasonable delay in presenting or prosecuting the petition.

In the result, I am satisfied, on the basis of the evidence adduced, that the case for the petitioner has been proved on a balance of probability. Accordingly, I pronounce a decree nisi for divorce and order that the marriage between the petitioner and the respondent be and is hereby dissolved. A decree absolute to be granted after six (6) months on application. Each party to bear his/her own costs. It is so ordered.

Dated and delivered at Malindi this 28th day of February 2008.

N. R. O. Ombija

JUDGE