



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
DIVORCE CAUSE NUMBER 96

E.M.M PETITIONER

VERSUS

B.K.M RESPONDENT

JUDGMENT

The Petitioner E.M.M and Respondent B.K.M entered into a Civil Marriage at Nairobi on 13th July, 2004. They cohabited as husband and wife briefly before the Petitioner migrated to the United States of America on a green card. Her husband who wanted to travel with her and who also sought a United States of America – Visa, was not granted one. The result was that Petitioner left her husband back in Kenya as she resided abroad in the United States in America.

As can be expected, this separation began to have its toll. The Petitioner sent money to the Respondent to assist him apply for a Visa but apparently going to America did not any more appeal to him. The evidence on record suggests that he spent the money for other purposes.

A year later the Petitioner came back to Kenya to see if she could assist her husband get the United States of America Visa. He collected her from the airport and drove her all the way to Nanyuki in company of his brother. However according to her testimony, the Respondent did not show as much concern towards her as a husband should. He is said to have dumped her in his mother's house and gone to sleep elsewhere. The next day he did not show up and she decided to return to Nairobi where she resided with her sister before she left to United States of America after a few days. She attempted to communicate with the Respondent on his mobile phone but it was answered by a woman, who the Respondent promptly introduced as his wife. Further inquiries established to the Petitioner that the woman who answered his phone was indeed married to the Respondent and the two had in the meantime been blessed with one child. All these damning information is said to have come from the Respondent's brother and the brother's wife. She therefore had no reason to doubt its veracity, she said in her evidence.

The above evidence from the Petitioner was uncontroverted as no Answer was filed to this Petition. Thereafter the couple never communicated even after the Respondent had been served with this petition.

It is the testimony above that the petitioner seeks dissolution of their marriage basing her case on the

grounds of adultery and also cruelty and also on the ground that the marriage has irretrievably broken down.

I have carefully considered the evidence aforesaid, taking into account the fact that it is not controverted. I am persuaded that the Respondent has committed adultery with another woman who is not his wife while the marriage between him and the Petitioner lasted. I believe that the Respondent has even been blessed with a child with the second woman and that adultery can be presumed from the said relation. I am not however convinced that there is evidence for cruelty although desertion could have been easily proved had it been pleaded.

On the other hand the evidence on record shows beyond question that this was a still-born marriage. The parties entered the marriage, in my view, not really intended to last but probably as a vehicle to lift the Respondent to the United States of America using the Petitioner's Green Card to get a visa. They cohabited only briefly before the petitioner left Kenya. They never resumed cohabitation thereafter. Attempts by petitioner to assist Respondent never lifted off the ground. In my view the marriage has also so irretrievably broken down that there is no chance of having it saved. It is public policy requirement, therefore, to terminate such. I will do so in the following orders: -

ORDERS

1. The marriage entered into between E.M.M and B.K.M on 13th July, 2004 is hereby dissolved and a decree nisi for six months shall issue.
2. Either party is at liberty to apply thereafter to make the decree nisi, absolute.
3. No order as to costs is made.

Dated and delivered at Nairobi this 22nd day of May 2008.

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D A ONYANCHA

JUDGE