



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

DIVORCE CAUSE 165 OF 2006

A.M PETITIONER

VERSUS

Z.A. RESPONDENT

JUDGEMENT

The Petitioner and the Respondent solemnized a civil marriage on 24th July, 1987. They obtained a marriage certificate dated the same day. The two thereafter cohabited as husband and wife at diverse places in Nairobi. During their marriage they were blessed with three children.

1. A.M 1 born on 4th April 1987,
2. A.M 2 born on 7th October 1988, and
3. A.M 3 born on 1st January 1990.

At all material times the Respondent was a citizen of Kenya and was domiciled herein. The Petitioner however, is not Kenyan although he has lived in Kenya for many years.

The evidence presented before me by the Petitioner shows that the parties lived happily together during the greater early part of their marriage. They revealed that they loved and trusted each other. The Petitioner in his evidence stated that during the late years of the 90's the Respondent started treating him with cruelty. That she called him a male prostitute from time to time when he arrived home from work in the evenings. That several times she would telephone him at his place of work or business and accuse him of immorality. That when he came home she would also confront him physically and this confrontation would sometimes become a physically exchange of boxes and sometimes it was a dirty oral exchange. That the cruel treatment from the respondent also became mental cruelty in that he began fearing for his life. He feared being poisoned or being waylaid by thugs set on by the Respondent.

The Petitioner also revealed that the effect of these squabbles and attacks on each other filtered to the children. The latter lost concentration in their studies and began adopting unruly conduct. Their original good school performance deteriorated and their school authorities started to seriously complain and warn the parents. This contributed to the worsening relationship between the couple.

Then it reached a point when the two would not sleep in the same bedroom, let alone the same bed. The love between the two had so much dwindled that it turned to a dislike and eventually, a hatred for each other.

The Petitioner denied conducting extra-marital relationship, especially with one E.T who he admitted, is his room-mate, business partner but never lover or sex-mate. He also denied having shared a love affair with one other lady called S from Uganda with whom the Respondent alleged, the Petitioner has a child. He denied treating the Respondent with any cruelty physical or mental although he argued he responded in kind when attacked by the Respondent.

In January, 2006 the situation had so deteriorated that the Petitioner, as he asserted, had to move out of the matrimonial home. He later began sharing a home with the said woman known as E.T. He however still denied sharing a bed with her.

The Respondent had filed an Answer to the Petition and had also filed a Cross-Petition to which apparently, the Petitioner did not file any Reply. In her testimony the Respondent generally denied the allegation of cruelty against the Petitioner contrary to the Petitioner's testimony. She however admitted that the two had orally and physically confronted each other on many occasions during their marriage. She admitted that towards the end of their stay together before the Petitioner moved out of the matrimonial home, the confrontations had become violent and intolerable between them. She admitted that she indeed accused the Petitioner of extra-marital relationship and that she still does today. She asserted that the Petitioner lives not only in one house with E.T but also in one bed. That the said E.T may be a business partner indeed, but she was also his sex partner.

I have carefully considered the evidence from both the parties. I have come to the conclusion that it is majorly true. The two came to distrust each other as much as they physically and mentally attacked each other. I believe that they both attacked each other in the manner they asserted about each other. I am therefore of the view and I find that they are each guilty of both mental and physical cruelty against each other and unfortunately, against their children to whom they caused mental cruelty.

The evidence on the record in my view, in addition, proves that the Petitioner is guilty of adultery arising from his relationship with E.T. That Petitioner lives together with her alone in the same house day in day out is suggestive of and proves that the two do share more than the house. I do not therefore, take lightly the Respondent's testimony to the effect that Petitioner and the said E.T share a bed as well.

Besides the proof of cruelty and Respondent's proof of adultery, both of which I am satisfied, have been proved beyond a reasonable doubt, I am also satisfied that by the time the Petitioner decided to leave the matrimonial home, their marriage had become an empty shell. It had become empty of love and full of hatred. I observed that the two could not even stand the presence of each other. I see no hope of the two coming together in any possible reconciliation.

The marriage is clearly on the rocks. They both want it dissolved, hence the fact that they both filed petitions for dissolution. I am therefore convinced without any reasonable doubts that the marriage is so irretrievably broken down that it has no chances of being salvaged. Any attempt by the court to keep them tied together by prolonging the marriage will be a punishment against the two and will stand contrary to public policy. In the circumstances, the best course is to dissolve the marriage. I hereby make the following orders: -

ORDERS

1. The marriage between A.M and Z.A solemnized on 24th July, 1987 is hereby ordered dissolved with a decree nisi issuing for six months with liberty to either party to apply to make the same final.
2. Either or both parties are at the liberty to move the court orally or formally for orders of maintenance and education of the children.
3. Costs of the suit to be cross-petitioner.

Dated and delivered at Nairobi this 10th day of April, 2008.

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D A ONYANCHA

JUDGE