



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

Divorce Cause 129 of 2006

S.M.K PETITIONER

VERSUS

M.W.M..... RESPONDENT

JUDGMENT

The petition herein filed by the husband was duly certified as an undefended cause.

As per the uncontroverted testimony of the Petitioner, he had relationship with the Respondent since 1994 and they formerly solemnized their marriage on 8th June, 1997. Marriage certificate was produced.

He had supported the Respondent when she was training as a nurse and also after the marriage when she undertook midwifery course. They cohabited at a premise in Nairobi.

A daughter was born to them on 28th December, 1997.

The marriage was smooth upto 2000, when the Respondent applied for a job to U.K. without his knowledge. He opposed the idea when he became aware and thereafter the problems started. Her parents intervened but she did not take his intervention lightly. In 2003 she called his boss at the office and used discrediting and derogatory language against him. He was heading Customers' Service Department but after her call his boss started doubting his capability and thus he had to resign from his job to save his future. She wrote a letter to him apologizing for her behaviour and asked to be forgiven. The said letter was produced as Ex.3.

When he was looking for another job the problems became worse. She told him that her money is for herself and her child only. She asked him to leave the house, which he had managed to purchase without any contributions from the Respondent who was buying properties on her own. He was thus forced to leave the matrimonial home on 13th December, 2003.

She used to tell him that he would meet his death by road accident or through HIV/AIDS.

When he went back to collect his belongings and to leave the child who was with him, he found that she had changed the locks.

She then filed an application for guardianship before Children's Court seeking joint custody of the child to her and her brother without involving him. He was described as unmarried in the said plaint, which hurt him so much. He opposed the suit and the Children Court granted joint custody to him and the Respondent. The pleadings and order of the Children Court, Nairobi were collectively produced as (P.Ex.4). The child is living with him since then. He produced her school report (P.Ex.5) in evidence. It shows that she is a bright child. The Respondent is still working in U.K. and the last she came to Kenya was in April, 2008 when she only saw the child.

He also testified that the Respondent had a drinking habit and she used to come home late going to Nyama choma places in company of strangers.

According to him the marriage between them is a mockery as he has been treated with utmost cruelty by the Respondent. His attempts and hopes to reconcile have come to naught. She has virtually deserted him and child of the marriage. Since she kicked her out of home in 2003, there is no relation between the two.

The testimony as briefly stated by me remains uncontroverted.

The cruelty, as per law, can be mental as well as physical injuries, hurt or harm inflicted by one spouse to another which have detrimental effect on mental or physical health of the person alleging cruelty. I would also go one step further to accept that the continuous behaviour of a spouse which is not expected to be received by another spouse, can be termed as cruelty as creating trauma and mental unease in the mind of the spouse aggrieved. This is the case here.

The trouble started when the Petitioner opposed the Respondent's plans to go to U.K. leaving the child and Petitioner behind. It is on record that at least since 2005 she is in U.K. and the child is with the Petitioner, both of them having been given a joint custody. At this stage without anything further on the record, I shall not disturb the position and I do note that the Petitioner does not seek any order of custody.

From the uncontroverted facts put forth before me, I do find that the Petitioner left the home under duress since December, 2003 and the parties have not resumed their marital relationship which according to the Petitioner is unlikely to be resumed. I have no other facts to enable me weigh the evidence led by the Petitioner which was straightforward and supported by documentary evidence. I thus accept the same as credible and do rely on them.

I also find that the petition has not been filed or prosecuted in collusion with the Respondent.

In the premises, I order that the marriage solemnized on 18th June, 1997 between the parties be dissolved.

I shall not make any order on costs though asked for by the Petitioner.

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

K.H. RAWAL

JUDGE

22.5.08