



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

DIVORCE CAUSE NO. 8 OF 2006

S.R.S PETITIONER

-VERSUS-

R.P.S RESPONDENT

JUDGMENT

Coram:

J. W. Mwera J.

Menezes for the Petitioner

Ms. Sewe for Miriu Mungai for Respondent

Raymond CC.

On 28/11/2006 the petitioner, S.R.S, came to this court seeking a dissolution of her marriage to the respondent, R.P.S The reasons relied on were desertion and cruelty.

The petition said that the two were married on 22.11.1998 at Nakuru under Hindu customs and rites and they cohabited at Nakuru. At the time of marriage, the petitioner had a son, A.C, while the respondent also had a son, H. That about 15.7.2003 the respondent ordered the petitioner to move away from the matrimonial home and to date the parties are not cohabiting together. The constructive desertion was caused by the respondent's willful and unjustifiable cruelty to the petitioner – a thing that posed a danger to her mentally and physically. That he displayed frequent uncaring attitude towards the petitioner with her son. He neglected matrimonial duties and denied the petitioner conjugal rights. Thus the marriage irretrievably broke down. That the petitioner did not connive, condone or collude in all that led to this petition. Besides asking that the marriage be dissolved, the petitioner also asked for the custody of her son, A.C as well as alimony payments. There was a further prayer that orders for settlement of property also issue and the respondent do bear the costs of the petition.

Ms. Muriu Mungai & Co. Advocate (Nairobi) entered appearance for the respondent and later filed an answer to the petition on 18.1.2007. The petitioner replied on 30.1.2007. Before the petition opened for trial on 5.5.2008, the parties recorded a consent regarding the custody of the two children (above), payment of Ksh 1.5m to the petitioner by the respondent and transfer of a motor vehicle . to the petitioner. Further that the respondent would also pay costs of the petition. That consent ought to be extracted as part of this judgment.

The petitioner was then heard; the respondent did not offer any evidence and no party submitted.

After going over the pleadings, the petitioner produced two certificates (Exhibit P1, 2) to evidence the couple's marriage at Nakuru on 22.11.98. While the petitioner was a widow, the respondent was a widower. Each knew that the other had come into the marriage with a child. The couple lived in the respondent's family home at Nakuru. The court heard that the respondent and his family did not respect the petitioner with her family. The respondent was abusive to the petitioner with her son e.g. that whenever there were holidays, he took his son along but left behind the petitioner with her son. That attempts to reconcile the couple did not succeed and when the treatment got so much, the respondent ordered the petitioner to leave the matrimonial home. She did so. First, she lived briefly in Nakuru then moved to Kisumu. That state of things has persisted for 5 years. So this court should dissolve the marriage.

In cross examination, the petitioner said she did not treat the respondent's son badly. Instead he treated her son badly. She was not too demanding and she did not move out of the matrimonial home on her own, except that she was ordered out by the respondent.

Having heard the evidence in support of the petition with nothing in rebuttal, this court is satisfied that the respondent treated his wife, the petitioner, in an abusive manner. Also lack of care, attention and failure to do matrimonial duties can be classified as cruelty. Then that the respondent ordered the petitioner to leave the matrimonial home, now 5 years are gone. That constitutes constructive desertion on his part.

With proof of those grounds, this court is minded to and it dissolves the marriage herein as sort. The other orders of the court are as per the consent order. Decree nisi to issue in the matter later to be made absolute.

Judgment accordingly.

Delivered on 22.5.2008.

J. W. MWERA

JUDGE