



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Divorce Cause 79 OF 2006

H.S.P PETITIONER

VERSUS

V.V.A..... RESPONDENT

JUDGEMENT

The amended petition for dissolution of marriage was filed by the wife on 7th July, 2006. The husband filed his Answer and Cross-petition on 9th August, 2006. The Reply to the said Answer and Answer to Cross-petition was thereupon filed on 25th August, 2006.

Thereafter the certificate from the Registrar under Rule 29 of the Matrimonial Causes Rules, was issued.

On the day affixed for hearing the parties and their respective counsel agreed that the Petitioner shall file appropriate application for maintenance for herself and the child of the marriage and the same be heard after this cause is finalised.

Thus, I was left with the determination of the issue of dissolution of marriage.

The Petitioner took the witness stand and testified as regards the solemnization of their marriage on 23rd July, 1988, their cohabitation thereafter at Goa (Republic of India); London (U.K.); Mumbai (Republic of India); Nairobi and Kisumu in Republic of Kenya.

They have one son of the marriage named M.V.S born on 31st August, 1989. As he had already attained majority, she withdrew her prayer for his custody, care and welfare made in the petition.

The parties are residents of Kenya and she confirmed that no other proceedings is filed by either of them in respect of their marriage. She confirmed that she has not presented or prosecuted her petition in collusion with the Respondent.

She stated that the Respondent has treated her with cruelty since the celebration of their marriage. To

support her claim, she recalled an incident of assault by the Respondent in the year 2003. The Respondent had opened a business in Kisumu while she and her son were staying at their Nairobi house so as not to disturb his education. She decided to visit the Respondent in Kisumu for four days and the Respondent did not welcome her visit. He assaulted her violently and she had to report to the police that incident. The Respondent was charged for assault in Criminal case [PARTICULARS WITHHELD] at Kisumu. She withdrew the charge to pave way for reconciliation, which did not happen and the Respondent stopped having any contact or communication with her or their son. He also ceased to take care of them and stopped taking any paternal responsibility for the son. It was only a week before the hearing of this petition, the Respondent invited their son to come to Kisumu. She allowed and the son did so and visited him. She stressed that since 2003 the Respondent had no communication with her and that she has not condoned acts of cruelty meted out to her by the Respondent.

She concluded that their marriage is irretrievably broken down and prayed for order of its dissolution.

The learned counsel for the Respondent did not have any question for the Petitioner and also stated that the Respondent did not, who was present in the court, wish to adduce any evidence.

Thus the testimony from the Petitioner remained uncontroverted. I have sufficient proof to show that a charge of assault was lodged against the Respondent and the Petitioner withdrew the same in anticipation of a reconciliation which the Respondent totally ignored after being freed of the charge.

He also isolated himself from the family since 2003 which again is not expected from a spouse. After that non-communication since the year 2003, the marriage is broken down irretrievably.

In the premises, aforesaid, I find that the Respondent is guilty of cruelty against the Petitioner as alleged in the petition and that the petitioner has proved her case as per section 10 of the Matrimonial Causes Act (Cap 152).

I therefore direct that the marriage solemnized between the parties be dissolved and decree nisi be made absolute within 60 days hereof.

I shall not make any order as to costs.

Dated, signed and delivered at Nairobi this 24th day of July, 2008.

K.H. RAWAL

JUDGE

24.7.08