



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
DIVORCE CAUSE 148 OF 2005

M.M.N.....PETITIONER

VERSUS

E.N.M.....RESPONDENT

JUDGMENT

The Petitioner/wife has filed this petition to dissolve her marriage with the Respondent solemnized on 4th October, 1996 after long cohabitation since 1980. Their union has been blessed with four children born in 1980, 1982, 1985 and 1993.

The Respondent, despite having been served, did not appear or file any response to the petition. Hence the learned Deputy Registrar certified the cause as undefended.

The Petitioner has stated that they have cohabited at three places in Nairobi and that both are residents of Republic of Kenya.

The parties have finalised the issue of settlement of matrimonial properties.

The Petitioner, in substantiation of her averments of cruelty and adultery, testified that the Respondent has on several occasions been physically violent to her and the children. She recalled one incident in September 2003, when he came late and dragged her to their bedroom pointing his fire arm at her throat and threatened to shoot her. She said that it was his direction that none of the family members should sleep before he came home and she narrated that one of the children M became victim of his wrath more often than others. The Respondent beat him when he found him not awake when he returned home at night. He would come home drunk, and would on many occasions force the Petitioner out of home and forced her to sleep out of the house irrespective of the weather.

She testified that in October, 2005, he chase her maid when he was naked and wanted to have sex with her. When she refused, he chased the Petitioner and her maid out of the house forcing them to report the matter to the Police at a Station in Karen. The police came home with her and the maid and after insistence and persuasion from them, the Respondent opened the door of the house. On that day he also threatened that he would make sure that she was dead.

After that incident, she and her children started living separately in a rental house and she filed this petition.

She also alleged that the Respondent was caught red-handed by her in their bed-room with their previous

maid M2 in early 2005. When she sacked the maid, the Respondent became violent.

She also stated that she has not presented or prosecuted the petition in collusion with the Respondent and that she had not condoned or connived the acts of cruelty and adultery committed by the Respondent.

Since October 2005, the Respondent has totally refused to maintain her or any of the children of the marriage including the last born daughter G.N born in 1993. She therefore asked for the order of custody, care and control of the said daughter who is a minor.

All these averments made under oath by the Petitioner remain uncontroverted. Apart from that, in my observation, I find her a candid and credible witness. Thus, I rely on the same as a true version of the happening in her marriage life. I however, note that the act of adultery with the house girl in early October, 2005 seems to have been condoned in absence of any averments by her that she thereafter refused to cohabit with the Respondent.

However, the acts of cruelty including the chasing of a maid in naked form have been sufficiently proved by the Petitioner as per the standard of proof required in a matrimonial cause.

The incidents of physical violence, driving the Petitioner out of the house and forcing her to sleep outside the home irrespective of weather, compulsion on the family to keep awake till the late hours of night waiting for him to come home, are totally beastly acts which no human being is expected to tolerate during the marital bondage or otherwise.

In view of the aforesaid premises, I direct that the marriage solemnized between the parties herein be dissolved and custody, care and control of G.N be granted to the Petitioner.

The Respondent shall pay the costs of this cause.

Dated and signed at Nairobi this 4th day of July, 2008.

K.H. RAWAL

JUDGE

4.7.08