



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
DIVORCE CAUSE 105 OF 2003
P.R.K.....PETITIONER
VERSUS
H.M.R AND ANOTHER.....RESPONDENTS
JUDGMENT

This petition (Amended) is filed by the husband against the wife and an unnamed person.

The parties married under Kikuyu Customary Law in the year 1978 and then solemnized their union under the Marriage Act (Cap 150) on 13th November, 1985.

The wife filed her Amended Answer after an order of the court and denied the allegation of cruelty and adultery made in the amended petition and in return made allegations of cruelty and adultery, against the Petitioner.

The Co-Respondent did not file any response to the petition although served on him.

Then after several adjournments, a hearing date of 19th June, 2008 was fixed by consent.

The learned counsel for the 1st Respondent was given time to make his house in order and was given time upto 10.00 a.m. Even though an application to cease acting for the Respondent was filed, Mr. Henia did not appear up to 10.55 a.m.. Thereafter the court ruled that the hearing to proceed ex-parte with the Petitioner declaring to proceed in person. After some time, Mr. Henia appeared when the hearing had just commenced and stated he had no objection for the matter to proceed ex-parte and the application to withdraw was not prosecuted.

The facts of marriage and the children of the marriage were not denied by the 1st Respondent. It is also admitted by the Petitioner that the separation cause was filed and defended. The court directed the parties to stay separately.

In his uncontroverted testimony he stated that it was only in 1986 that he learnt that 1st Respondent had been married previously and was divorced, which fact she hid from him and even before the Registrar of marriages. He was extremely hurt but due to their children he continued with the Marriage.

It was testified that the 1st Respondent has an ungoverned temper. Due to his official Duty as a Custom and Excise (transit) Officer, he had to escort the vehicles in transit to border posts and due to that fact she

nagged him and unreasonably made accusations and abused him. He recalled that on 8th March, 2003 when he came back home after his duty, she started hitting him with a Bible which she was reading and a stool. He had to take refuge in another room that night. He further stated that he had built a house for her in Umoja in 1987 but when he enrolled their first son to University of Nairobi, she only contributed Shs.20,000 only for two terms out of the fees of Shs.80,000. He continued that their last born was attending [particulars withheld] and he did not have his own vehicle on retirement. On his request she would pick the child but instead of dropping him home, she would drop him in the town forcing him to take matatus and to arrive home late. He denied the particulars of cruelty and adultery and stressed that the marriage is broken down due to her actions. He asked the court to dismiss the unsubstantiated allegations made in her Answer. Their last born is a minor and the 1st Respondent does not assist in the maintenance although she is in U.S.A. since the last two years.

As regards his allegation of adultery, he testified that on 19th July, 2003 it so happened that when he sat on their sofa at home, her handbag, which she must have forgotten to take, fell down and out came several documents, like photographs, credit cards for Barclays and Co-operative Banks and a love card from the Co-Respondent. He Produced those photographs and certified true copies of the credit cards and the love card. He testified that after making copies thereof, he returned the card and credit cards to the 1st Respondent. It is clear that the cards belonged to the Co-Respondent and the greeting card did contain endearing language.

He also testified that after their separation, both Respondents have been living together. He reiterated and adopted all the averments made in his Amended Petition filed on 16th April, 2004.

He denied that he has filed the petition in collusion with the 1st Respondent and that he has not condoned and been accessory to her acts of cruelty and adultery.

With these evidence, he asked for dissolution and custody of two children. But I note that as at this date, only the last born is a minor child.

Looking at his demeanours and his uncontroverted evidence I am satisfied that the Petitioner has proved the acts of cruelty as well as adultery as required under Section 10 of the Matrimonial Causes Act (Cap 152).

In the premises, I do grant the order of dissolution between the parties. I further grant order of custody, care and control of the last born child G.G.R to the Petitioner.

Decree Nisi be made absolute within 90 days.

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

K.H. RAWAL

JUDGE

4.7.08