

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

P Y C R PETITIONER

VERSUS

R Y C IRESPONDENT

JUDGMENT

The learned Deputy Registrar certified this petition as an undefended cause.

The Petitioner in her uncontroverted testimony stated that she married the Respondent on 12th May, 1986 at the Registrar of Marriages' office, Nairobi.

After the marriage they cohabited at a premises along Third Parklands Avenue, Nairobi. A daughter was born of the marriage on 27th January, 1991. They named her KY C R. She stated that there is no previous proceedings as regards their marriage and that she did not collude with the Respondent in presenting or prosecuting this petition.

According to her the marriage has problem since the inception. The Respondent was a compulsive gambler. He never would hold a permanent job and she had to bail him always from his ever present debts. He would make her a point of ridicule and constant embarrassment. He would steal her money, jewelry and cheque leaves so that he could gamble more or pay his debts from gambling.

His actions gave her great mental anguish and despair.

As if that was not enough, sometimes in 2005, the Respondent started having an affair with the daughter of their good friends named K. She got hold of a diary written by the said K as well as Safari com mobile list which showed the calls made to the said lady even during late hours at nights and early mornings. The Respondent still denied having any affair with her and stated that she wrote the diary to keep off a boy at her school. However, eventually both the said lady and the Respondent agreed that they had intimate relationship and that they wanted to get married.

The parents of the girl asked her to forgive her and make a new start in their marriage. She went to India for a while and on her coming back, she found nothing has changed.

Thereafter she filed the petition stressing that the marriage is irretrievably broken, and prayed for dissolution of their marriage.

The evidence of the Petitioner is uncontroverted and I must state that the same was very honest, simple and straight forth. I do accept th same as a credible evidence. I thus find that the Petitioner has proved that the Respondent has committed acts of cruelty as well as adultery. The diary and call-list produced by the Petitioner point unhesitantly towards the extra-marital relation between the Respondent and K. His gambling habit has also caused immense mental anguish to her.

She has stated that she has not condoned acts of cruelty and has not been accessory to those acts.

I therefore order that the marriage solemnized between the parties be dissolved. The decree nisi be mad absolute within 60 days.

I also grant custody, care and control of the child of the marriage to the Petitioner.

Dated and signed at Nairobi this 25th day of September, 2008.

K.H. RAWAL

JUDGE

25.9.08