

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA

Divorce Cause 22 of 2008

M.BPETITIONER

VERSUS

E.I.W.....RESPONDENT

J U D G M E N T

M.B Petitioned this court to dissolve her marriage with one E.I.W in her petition dated 28th April 2008. When served with the petition, E.I.W failed to file any reply hence this petition proceeded for hearing exparte.

M.B, the Petitioner, was the only witness who testified in support of the petition. She produced in evidence a copy of the marriage certificate which indicated that she entered into a marriage with E.I.W on 26th May 1995 in a ceremony held at office of the Registrar of Marriages, Mombasa. The marriage is registered under the Marriage Act. At the time of the marriage, the Petitioner was a divorcee and the Respondent was said to be a bachelor. The Petitioner sought for the marriage to be dissolved because the Respondent was cruel to her. He was said to be violent to her and at some point he even threatened to kill. A complaint was booked with the police. The Petitioner produced a copy of the bond to attend court to show that the Respondent was arraigned before court to face a charge of attempted murder of the petitioner. The case is still pending. The Petitioner claimed the Respondent locked her inside the matrimonial house for days thus virtually theremained a prisoner until she was rescued by a good Samaritan called M.O. The Respondent was also accused of squandering the family income and money.

The Petitioner also accused the Respondent of concealing the fact that he had children with a lady called M.N before getting married to her. The Petitioner said the Respondent has deserted the Matrimonial home for over 5 years.

I have considered the evidence tendered by the Petitioner. The Petitioner seeks to have the marriage dissolved on two grounds namely: Cruelty and desertion. It is obvious the petition was served upon the Respondent who in turn filed a notice of acknowledgement of service but failed to file a reply. The averments in the petition and the facts deponed in the verifying affidavit have not been controverted. The evidence tendered in court have not been tested or shaken by cross-examination. I have no reason to doubt the veracity of such evidence in view of that. It is clear that the Petitioner was assaulted by the Respondent and she had to be treated at the Coast Provincial General Hospital. It is also apparent that the Respondent threatened to murder the Petitioner. This fact is shown by the pending criminal case file against the Respondent. There is no denial that the Respondent at some point locked the Petitioner in her house and she had to be rescued by a good Samaritan. For the above reasons I find that the ground of cruelty has been proved to the required standard in Matrimonial Causes.

The other ground which was relied upon is that of desertion. The Petitioner has stated that the Respondent has deserted the matrimonial home for more than five (5) years. I have no reason to doubt that allegation. The Respondent failed to respond to the allegation. I find the allegation to be truth in the absence of any contrary view.

In the final analysis, I find that the petition has been proved to the required standard. I issue an order dissolving the marriage. I make no order as to costs because the Petitioner abandoned that prayer. A decree nisi be issued and the same be made absolute after a period of 30 days.

Dated and delivered at Mombasa this 31st day of October 2008.

J. K. SERGON

J U D G E

In open court in the presence of Mr. Kassim Shah h/b Mrs. Gudka for Petitioner

N/A for the Respondent.