



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Divorce Cause 27 of 2007

ASPETITIONER

VERSUS

AM RESPONDENT

JUDGMENT

The petition was certified as an undefended cause but at the time of the hearing of the cause Ms Janmohammed the learned counsel for the Respondent was present having duly filed her Notice of Appointment of counsel. She did not test the testimony of the Petitioner which remained uncontroverted.

The Petitioner testified that the marriage between her and the Respondent was solemnized on 27th October, 2000 and they cohabited at various places including Nairobi Kenya, Holland, Nigeria and United Kingdom.

There is a female child of the marriage named [particulars of her names withheld]. The issues of the custody and maintenance in respect of her are before the Children Court, Nairobi.

The Petitioner has always been employed during the period of cohabitation, which was not the fact in respect of the Respondent, though he is presently employed as a teacher with St. Jeffery School, Nairobi. The Petitioner was working as a Managing Director with Proctor and Gamble Services Ltd. as a Managing Director, but she has now moved up as a Director of External Relations posted at Johannesburg, South Africa.

The Petitioner is seeking dissolution of the marriage on the ground of total negligence by the Respondent in looking after and/or maintaining the family. She complained that the Respondent has never made any efforts to seek jobs so that he could contribute towards the sustenance and welfare of the family. Since the marriage, the onus of looking after the family, including the Respondent, had fallen on the lone shoulders of the Petitioner. The total negligence of the Respondent caused mental anguish to the Petitioner which affected the harmony in the marriage. Even after he obtained the job at the school his negligence and indifference continued. To add fuel to the fire, on 10th December, 2006 he left the matrimonial home without any intimation to the Petitioner. Her mental anguish increased due to the said act of now leaving her and the child to be on their own.

She has testified that apart from the proceedings before the Children Court, there is no proceedings in respect of the marriage before any court. She denied emphatically that she has condoned those acts of cruelty by the Respondent. She also denied that the petition was presented to this court in collusion with the Respondent.

This is the testimony before the court. It is the case of the Petitioner that due to the acts of total negligence, she has not seen or experienced the warmth and comfort of a married life which is a legitimate expectation of a spouse. When she could have expected some solace on the Respondent having a job and confidence, the Respondent deserted her to cater for the home and the child on her own. This consistent acts of negligence do amount to acts of cruelty when mental health of a spouse is affected and harmed. This is the case in the marriage of the parties before me.

Her testimony was forthright and I find the same credible, apart from it remaining uncontroverted.

In the premises aforesaid, I shall definitely find, and hereby do so, that the Respondent has been guilty of cruelty against the Petitioner and her child.

Having found so, I order that the marriage in fact solemnized between the parties be dissolved and decree nisi be made absolute within 60 days.

There is no order as to costs.

Date and signed at Nairobi this 23rd day of October, 2008.

K.H. RAWAL

JUDGE

23.10.08