

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Divorce Cause 51 of 2007

BWK PETITIONER

VERSUS

SKK RESPONDENT

JUDGMENT

The parties herein married under the Marriage Act 9cap 150) on 20th May, 1988. They cohabited at a premises along Kahawa Sukari Estate and had two children from their marriage.

Around January, 1994 the Petitioner was awarded scholarship to pursue further studies at U.K. She accepted the offer with the consent of the Respondent. It was agreed between them that the Respondent and the children shall follow her so that they can settle there as a family. The Respondent did not do so and sent only the children.

After that, he refused to have any communication with her or the children. As he refused to assist her, she had to discontinue her studies and look for a job to maintain her and the children. Whenever she would make a telephone call to the Respondent, a lady introducing herself as the Respondent's wife picked the phone and refused to let her talk to the Respondent. The Respondent never called her since the year 1994. He refused or neglected to give any support towards maintenance and education of the children since 1996.

The Petitioner returned to Kenya in the year 2006 and when she went to their matrimonial home, she found the Respondent living with a lady called Faith otherwise known as Mama John. The Respondent told her that he was happy with his new life with the said lady and was not interested in their marriage at all.

That is when the Petition was filed which the Petitioner testified that, was not presented or prosecuted in collusion with the Respondent. She denied that she had condoned the cruelty or negligence of the Respondent or been accessory to the adultery or desertion of almost 13 years by the Respondent.

Her testimony remained unchallenged and I also found the Petitioner as a credible witness.

The marriage between the two stopped being a marriage since 1996 when the Respondent only sent children to U.K. even after the papers for settlement in U.K. for all were sent by the Petitioner. He, in all sense of the term, deserted the Petitioner and the children of the marriage. He started a new life with another woman with impunity.

I thus agree with the Petitioner and find that the Respondent is guilty of cruelty, desertion and adultery.

The marriage is, due to those acts, irretrievably broken down.

I thus allow the petition and direct that the marriage solemnized between the parties be dissolved and decree Nisi be made absolute within 45 days.

There is no order as to costs.

Dated and signed at Nairobi this 16th day of October, 2008.

K.H. RAWAL

JUDGE

16.10.08