

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

Civil Case 21 of 2106 of 2000

JNK
PLAINTIFF

versus

AWK DEFENDANT

JUDGMENT

J N K ('J') who is the plaintiff herein concedes that A W K ("A") has been his wife common law wife since 1991, has nevertheless commenced this action against her and he now seeks an order to have the said marriage dissolved on grounds of cruelty whose particulars are very well spelt out.

But A opposes his claim, which she urges the court to disregard, and she prays that the suit be dismissed with costs.

The two met in 1991 soon after which they started cohabiting, each had children from prior unions. J left the matrimonial home at [Particulars withheld] estate in Nairobi in August 2000 never to return. According to him they started encountering marital problems after A lost her job with British Airways in February 1996; that the problems climaxed in 1999 when A declined to take care of his own three children from hi previous union; that she became very abusive and hostile to him; that she also became very militant. It was his evidence that they then moved into separate bedrooms between May and June of 1999, and never shared bedrooms thereafter, and that is when they started communicating in writing. He blamed her for having vacated the matrimonial bed and denying him his conjugal rights.

It was also his evidence that she treated him with cruelty and utter contempt by spreading rumours amongst his friends and relatives that he was an adulterer and a person of loose morals; and to his superiors at work that he had neglected his responsibilities which he denied ever having neglected.

But according to A, a former officer with British Airways , who worked away from home most nights, their problems started when she had to spend more time at home after she lost her job, for it is then that J appeared not to be the man whom thought she knew; that he would come home at early hours of the mornings, which was at 2.00 am or 3.00 am: that he would become very furious and would subject her to acts of unnatural of sex whenever she questioned him about the late hours. It was also her evidence that his action infuriated her and affected her to a point where she lost her confidence she had nobody to turn to. All in all she denied having treated him with cruelty; having spread malicious rumours about him, or having locked him out of the bedroom, and it was her evidence that he left the bedroom on his own accord soon after which he finally left the house after she followed him to the bedroom, which he had moved into.

There was evidence that on more than one occasions, J caused the arrest of his wife for trumped up charges, one of which offence was that of creating disturbance and threatening to kill, which latter charge carries a maximum term of ten years imprisonment, but that she was acquitted in all instances for her husband who was the main complainant failed to turn up in court to give evidence against her.

It is also evident that at one time he had her forcibly removed from her bed in their house in [Particulars withheld] estate by ten armed men while she was in a semi nude state, and that when she called out to him, he had actually rushed back to the house to bring her trouser suit from her wardrobe. Though A

claimed that J used to beat her he only admitted having beaten her wife on one occasion which led to the loss of her teeth. A look at A reveals facial disfigurement of one who in my view was a stunning woman during her youth.

In my humble opinion J' does not appear to be the harassed and intimidated man that he claims to be. Indeed his actions towards his wife were not totally inconsistent with the action of a loving and responsible husband, nor can they be condoned by this court which he now urges to find in his favour.

Having considered the evidence before, I find that J has failed to prove his case to the expected standards, and that indeed the evidence before me tends to show that it was A who suffered untold cruelty for his acts of cruelty were not mere trivialities but did actually cause harm not only to her physical health but to her mental health. A however urges this court to dismiss his suit. She testified that she still loves her husband whom she wants back.

I am convinced that J was the perpetrator of all the evils that befell his marriage to A, and that he took calculated steps over a period of at least four years with a view to having the marriage dissolved. Had I heard the matter within two years, of 2000, I would have not made the orders which I will make now make, and it is clear that an order of dissolution would not have issued. Unfortunately it is eight years since this cause was instituted; the two have failed to resolve the issues which led to their living apart in the year 2000 and they have not ceased cohabitation since then. I guess I can therefore rightly say that their marriage has broken down irretrievably and it would be impossible to salvage their marriage. It is for this reason that I reluctantly disallow A's prayer for dismissal of the suit and I do order the dissolution of their marriage and order a decree nisi. J will bear the costs of this suit.

Dated and delivered at Nairobi this 9th day of October 2008.

JEANNE GACHECHE

Judge

Delivered in the presence of:

Mrs. Gulenywa h/b for Mrs. Wambugu for the plaintiff

Mrs. Rashid h/b for Mrs. guerwa for the defendant