

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Divorce Cause 160 of 2002

PETITIONER

LWF

VERSUS

RESPONDENT

JWF

JUDGEMENT

The Petitioner/wife on the day of hearing of the petition withdrew her petition and thus the Respondent/husband testified in support of his cross-petition.

The parties married on 8th May, 1992 under the Marriage Act (Cap.150) and cohabited at Zaire and Nairobi (Kenya). They have one son named GSF born in 1992.

The Respondent has based his prayer for dissolution on the ground of adultery and cruelty. I shall state at the outset that as far as the ground of adultery is concerned he has only averred that the Petitioner/wife committed adultery "***as early as April, 1999 with one J and a German named F living at Inter Continental Hotel who worked for A***". Though not controverted, before the court, I cannot find that the said ground is proved as per the standard of proof required in the matrimonial causes, which is lower than beyond reasonable doubt and higher than balance of probability. I do not find that he has met that standard and thus reject that ground.

The grounds of cruelty are persistent lies, frequent undisclosed absence from home for long periods of time, and then she moved out of the matrimonial home totally before June, 2001, without informing the Respondent about her whereabouts. Even she had refused to divulge her details of residence or telephone to their son. He has further averred that the Petitioner/wife has been involved with fraudulent – counterfeit dollar production persons from West Africa. One person named as Mr. K is imprisoned for possession of drug dealings and that the Petitioner/wife had been taken to police custody (Kileleshwa Police Station) for questioning by C[...] Bank of Kenya Fraud Department.

The Respondent testified that all these actions of the Petitioner/wife has given him stress and his health has suffered.

He asserted that their marriage is irretrievably broken down. He denied that he had condoned those cruel acts from the Petitioner/wife and that he has filed his cross-petition or that the Petitioner has withdrawn her petition in collusion with each other. He also asked for custody, care and control of the child of marriage while seeking dissolution of their marriage.

The Petitioner and her counsel were present when the Respondent gave evidence but his evidence was not tested by way of cross-examination. His testimony thus remained uncontroverted. It is not in doubt that the marriage is beyond salvage and that the consistent acts testified by the Respondent can be termed as acts of cruelty. His averments that he has suffered stress and anguish due to those acts is not traversed. I also note that the Petitioner/wife also has denied the child of the marriage the motherly love and care and has left him under the care of the Respondent since around the year 2000.

The upshot of all the above is that I do find that the Petitioner has treated the Respondent with cruelty and that she has neglected the child of the marriage.

In the premises, I direct that the marriage solemnized between the parties be dissolved and decree nisi be made absolute within 45 days.

I further order that the custody, care and control of the child of the marriage GSF be granted to the Respondent.

Orders accordingly.

Dated and signed at Nairobi, 26th November, 2008.

K.H. RAWAL

JUDGE

26.11.2008