



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA**

Divorce Case 16 of 2008

N.R.S.....PETITIONER

VERSUS

S.M.K.....RESPONDENT

JUDGMENT

N.R.S (hereinafter “the Petitioner”) and S.M.K (hereinafter “the Respondent”) were married on 13th April 2005 under the Marriage Act, Cap 150, Laws of Kenya. The couple is blessed with one child namely S.M who was born on 3rd April 2006. They lived and cohabited in Mombasa along until September 2006 when the Petitioner, with the said child, left the matrimonial home to her parent’s home in Nyalı Mombasa.

On 14th April 2008, the Petitioner filed this petition for divorce on the ground of the Respondent’s cruelty. On being served with the petition, the Respondent filed an answer to the petition denying the cruelty and also cross-petitioned for divorce also on the ground of cruelty. The petitioner in answer to the cross-petition has denied the cruelty alleged in the cross-petition.

When the matter came up for hearing on 9th October 2008, the Respondent abandoned his cross-petition and only the petitioner testified and was cross examined by counsel for the Respondent. The Petitioner testified that she got married to the Respondent on 13th April 2005 under the Marriage Act and lived and cohabited in Mombasa. During the marriage, they were blessed with the said S.M who was born on 3rd April 2006. The marriage experienced serious problems due to the cruelty stated in her petition and she left the matrimonial home over ten (10) months ago and won’t return thereto because her marriage with the Respondent has irretrievably broken down. The Petitioner therefore sought the dissolution of the marriage and that she be awarded the custody of the child S.M.

On cross-examination by Mr. Kadima for the Respondent, the Petitioner testified that the Respondent would have access to the said child and would contribute educational and medical expenses. Pressed to state the level of contribution, the Petitioner specified that the existing level be maintained under which the Respondent contributes Kshs. 7,000/= towards the child’s education and Kshs. 3,000/= towards her maintenance. The Petitioner testified that the said child suffers from occasional fits and is attended to by Dr. Abuto and the attendance expenses are met by the Respondent. On the frequency of access, the Petitioner testified that she would have no objection, if the Respondent would have the child from 10.00 a.m. to 4.00 p.m. on Saturdays and between 10.00 a.m. and 2.00 p.m. on Sundays. During school holidays, the Petitioner testified that she would have no objection if the Respondent would have the child for three days of every week of the holidays over the weekend. The Petitioner further testified that she travels abroad a lot and would like to travel with the said child with the leave of the court.

Having obtained those assurances, I believe, the Respondent chose not to testify.

Having considered the evidence adduced before me, I am satisfied that the Petitioner has established the ground of cruelty and that her marriage to the Respondent is a shell and has irretrievably broken down. The marriage is therefore hereby dissolved. Decree nisi shall issue forthwith and the same will be made absolute after the statutory period.

The Petitioner shall have custody of the child S.M but the said custody shall be subject to the following provisions with regard to access, education, medical care and maintenance.

1) **Access:**

(a) During school terms, the Respondent shall have the child S.M on Saturdays from 10.00 a.m. to 4.00 p.m. On Sundays from 10.00 a.m. to 2.00 p.m.

(b) During school holidays: The Respondent shall have the child SM for three (3) days over the weekends every week of the holidays.

(c) Trips outside Kenya. The Petitioner may travel outside Kenya with the child SM with the leave of the court with notice to the Respondent.

2) **Education:** The Respondent shall contribute Kshs. 7,000/= per term towards the school fees of the child SM.

3) **Maintenance:** The Respondent shall contribute Kshs. 3,000/= per term towards the maintenance of the child SM.

4) **Medical expenses:** The Respondent shall be responsible for the medical expenses for the treatment of the child S.M by Dr. (Ms) Abuto.

With regard to costs, I am of the view that the order that meets the ends of justice is that each party should bear his/her own costs.

I give each party liberty to apply.

Orders accordingly.

DATED AND DELIVERED AT MOMBASA THIS 26TH DAY OF NOVEMBER 2008.

F. AZANGALALA

JUDGE

Read in the presence of:

Hamza for the Petitioner and Mwawasi holding brief for Kadima for the Respondent.

F. AZANGALALA

JUDGE

26TH NOVEMBER 2008