



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
DIVORCE CAUSE 154 OF 2007

W.K PETITIONER

versus

F.M.K RESPONDENT

JUDGMENT

W.K who is the petitioner herein, and who I shall also refer as W.K urges this court to dissolve her marriage to F.M.K , her husband of eight years. She bases her petition on the grounds on mental and physical cruelty.

The two were married on 25/8/2000 in a civil marriage. They have a seven years old son, who is in her custody by virtue of their consent order recorded in the subordinate court.

W.K testified how she left the matrimonial home on 15/3/2004, in compliance with a six days notice to vacate, which F.K.M gave the day before. They have lived apart since then.

It was her evidence that they started having marital problems during the second year of their marriage when F.K.M accused her of castrating him. She also testified that he had taken to consuming alcohol; was abusive, and would not only keep late nights, but would spend days away on many occasions.

She also testified that he hit her only once. That was in the year 2003. She was of the view that their marriage was not working; all efforts to reconcile them have been in vain, and that it has broken down irretrievably.

F.K.M who concedes to having hit on the aforementioned occasion, however testified that she initiated the attack and that he only hit her in self defence; and stated that he only spent nights away from home while on duty, a fact which he claims that W.K was aware of because he always informed her of his work and travel schedules.

He nevertheless denies having treated W.K with cruelty, and is of the view that their marriage has broken down irretrievably for which reasons he seeks its dissolution, as well as the custody of their only child. Unfortunately having consented that W.K be granted the custody of their son, he cannot now be heard to pray that he be granted custody and the latter prayer cannot thus lie as this court lacks the relevant jurisdiction simply because the aforementioned consent order has not been set aside.

Be that as it may, it was also his evidence that communication between them had broken down and continued to deteriorate especially after Christmas of 2003, when she forced him to spend days away

from home. In his view theirs has been a difficult and stressful marriage; they became cruel to one another and that despite counseling, it was in their best interests and that of their son that they live separately. His efforts to reconcile with W.K have not borne any fruit.

Both deny having colluded to bring forth this cause They are also categorical that neither has condoned the actions of the other.

It is trite in law that a party who alleges cruelty must show on a balance of probability that he or she has suffered acts of cruelty which are not mere trivialities but that the said specific acts actually caused harm not only to his or her physical health but to his or her mental health. W.K did not allude to this at all. It was the respondent on the other hand who seems to have suffered for in her own words he felt castrated and who it was alleged had suffered mental distress to a point where, as per her own pleadings, and a fact which he conceded to, he had to consult a psychiatrist who diagnosed him with serious hormonal imbalance. In the circumstances, and having considered the evidence before me, it is my humble opinion, the petitioner has not been able to prove her case to the expected standards and I do thus dismiss it.

There is no doubt that the two have lived apart for the last five and a half years. There is also no doubt that the respondent's efforts to reconcile them have been in vain. In my humble opinion, there is no marriage to salvage here, for it has broken down irretrievably, and I do therefore order that the said marriage be dissolved, and grant a decree nisi.

She shall bear the costs of this petition.

Dated and delivered at Nairobi this 5th day of November 2008.

JEANNE GACHECHE

Judge

Delivered in the presence of: