

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

Divorce Cause 109 of 2006

R.N.O.....PETITIONER

VERSUS

S.O.O.....RESPONDENT

JUDGMENT

By an amended Divorce petition filed in court on 21st August 2006, the petitioner R.N.O prayed the court to dissolve her marriage to S.O.O on grounds of cruelty and adultery.

The petition was served on the respondent on 23.8.2006 but he failed to enter appearance or file a reply to the petition.

The Registrar certified the cause to be heard ad undefended. The petitioner got married to the respondent on 15th March 1996, at the D.C's office in Kuria District. This was a marriage under the Marriage Act, as the marriage certificate produced as Exh. 1, shows. After marriage, the 2 lived and cohabited as husband and wife as shown in para 2 of the petition. There are no children of the marriage.

The petitioner recalled that in 1998, she was transferred from Migori District to Nairobi. She was then and is still an employee of the Ministry of Livestock.

The petitioner's transfer was on medical grounds. She left her husband in Migori, and he never visited her in Nairobi to date. She recalled the period they lived in Migori as husband and wife, and testified that her husband used to disappear from the matrimonial house under the pretext that he was going to visit his parents, but she later discovered that this was not true. She visited them to complain about her husband's behaviour. This prompted his father to travel to Migori to talk to both of them, but her husband was nowhere to be seen until after the weekend.

Her father-in-law spoke to both of them in an effort to sort out the differences and problems between them. Her husband promised to change, but he did not. He continued disappearing from the matrimonial home after his father had left Migori.

The petitioner also recalled that her husband disclosed to her, whilst still in Migori that he was having an affair with one "E" who once even came to the matrimonial house.

R.N.O's husband was also transferred to Nairobi in 1998, upto 2005 when he was again transferred to Bondo. They did not live together as husband and wife for the period he was in Nairobi because he was staying with E, with whom he had had a child. The petitioner got pregnant in 1997 whilst she lived in Migori with her husband but she suffered a miscarriage because of problems caused by her husband.

She does not want to remain married to the respondent because he deserted her in 1998, when she was transferred to Nairobi **on medical grounds**. The 2 have not communicated since 1998. Their marriage only lasted 3 years. The petitioner's counsel made written submissions to the effect that it was the respondent who had "***deserted the petitioner since 1998...***".

As the respondent did not enter appearance or file defence, and further did not appear in court to give

evidence, the petitioner's evidence remained unchallenged and I accepted it – as it showed that the respondent was cruel to the petitioner by his bad behaviour during the marriage, as evidence shows and the subsequent desertion which, in my considered opinion, has caused the breakdown of the marriage.

The couple have lived apart from 1998 to 2006, when the petitioner filed this petition. I do not see any chance of reconciliation as there is no contact between them.

The marriage has certainly broken down and I have no hesitation in granting an order to dissolve it. I also award the costs of the divorce to the petitioner.

Finally, I direct that a decree nisi does issue straight away today, and the same shall become absolute within a period of one month from today.

Dated at Nairobi this 29th day of March, 2007.

JOYCE ALUOCH

JUDGE