



REPUBLIC OF KENYA

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

Divorce Cause 137 of 2006

CHARLES AKUNGA GETATE..... PETITIONER

VERSUS

ELIZABETH MORAA AKUNGA.....

RESPONDENT

JUDGMENT

On 26.09.06 the petitioner filed petition praying for the following orders:-

1. That the marriage between the petitioner and respondent be dissolved.
2. That the respondent bears the cost of this cause.

At the hearing of these divorce proceedings on 07.12.06, the petitioner appeared in person while there was no appearance for the respondent.

The petitioner informed the court that the respondent was duly served on 27.09.06 with the divorce papers but she did not file any papers in response; that this is an undefended cause; that he (petitioner) adopted his petition in its entirety and asked for judgment in his favour.

The salient facts of the petition as gleaned from the pleadings and supporting affidavit evidence may be summarised as under.

The petitioner and respondent got into a customary marriage in December, 1976 in Kisii town, which customary marriage was later solemnized on 29.11.01 at Sheria House, Nairobi. The petitioner purported to attach a copy of the requisite marriage certificate to his petition but in fact no copy of marriage certificate was attached. His petition is accompanied by an affidavit verifying its contents as true.

The petition proceeds to narrate that after the marriage, the petitioner and respondent cohabited as man and wife at Kisii town in December, 1976 and at Buruburu in Nairobi between 2000 and 2001. Arising out of the cohabitation, 3 children were born as follows:-

- a) Paul O. Akunga – son – 27.08.77;
- b) Anthony O. Akunga – son – 27.08.78;
- c) Clifford A. Akunga – son – 1980.

The petitioner averred that he was an Education Officer at Jogoo House, Nairobi while the respondent was a Teacher by profession and that both were domiciled in Kenya.

The ground relied upon by the petitioner for the divorce sought is desertion, particularized thus:-

- i. That since 2001, the respondent developed a very wild temper all of a sudden without any provocation at all and took away the two eldest sons (of the marriage) leaving the last one alone at home while the petitioner was away on official duty, only for the petitioner to discover that the respondent wanted to migrate outside the country, which did not materialise. That the respondent swept the house clean with an intention of bringing the marriage to an end and therefore deserting the petitioner without a just cause for a period of at least three years preceding the presentation of this petition.
- ii. That the parties have never cohabited due to the respondent's denial of conjugal rights, therefore deserting the petitioner.

The petitioner added that the respondent has maintained little or no communication with the petitioner since 2001; that the two have lived separately as all attempts to have them reconciled have proved fruitless due to the respondent's hostility; that there have developed irreconcilable differences in the marriage and that the same has irretrievably broken down.

In view of the foregoing, the petitioner sought the divorce subject matter of these proceedings.

An affidavit of service by Joachim W. Kahari, process server deposes that on 27.09.06 he served the respondent with the petition, affidavit and notice to enter appearance at Buruburu Phase IV route No.58. The notice required the respondent to enter appearance within 8 days of service. The record shows that the respondent has never entered appearance or filed answer to the petition to date. This matter, therefore, proceeded as an undefended cause after the Registrar so certified it under rule 29 of the Matrimonial Causes Rules.

I have duly considered the case presented by the petitioner for the dissolution of the marriage between him and the respondent.

I am satisfied on evidence tendered before court, which remains uncontroverted and which I believe, that the respondent left the matrimonial house in 2001 without cause and that she has remained at large ever since.

Section 8 (1) (b) of the Matrimonial Causes Act, Cap.152 provides as follows:

'8. (1) A petition for divorce may be presented to the court either by the husband or the wife on the ground that the respondent –

(b) has deserted the petitioner without cause for a period of at least three years immediately preceding the presentation of the petition'.

The ingredients of desertion have been fulfilled in this case and I find the matrimonial offence of desertion duly proved. Accordingly, I hereby pronounce a decree of divorce and order that the marriage between the petitioner and respondent be and is hereby dissolved. *Decree nisi* shall issue forthwith, the same to be made absolute after expiry of 30 days of the date hereof, upon application therefor. The respondent shall bear the petitioner's costs of these divorce proceedings.

Orders accordingly.

Delivered at Nairobi this 28th day of March, 2007.

B.P. KUBO

JUDGE