



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU

Divorce Case 6 of 2006

JANE WANJIRU WAMBUGU.....PETITIONER

VERSUS

DAVID WAMBUGU NGUNU.....RESPONDENT

JUDGMENT

Jane Wanjiru Wambugu filed a petition in court seeking dissolution of her marriage to the Respondent David Wambugu Ngunu. She also seeks orders for custody of the two boys of the marriage IAN NGUNU WAMBUGU and JAMES MORGAN MWANGI WAMBUGU.

The parties were firstly married under Kikuyu customary law but later registered their marriage under the Marriage Act Cap 150 Laws of Kenya

^h day of August 1996.

The parties were blessed with two children now surviving namely:-

1. Ian Ngunu Wambugu born on 23/6/1991.
2. James Morgan Mwangi Wambugu born on 20/11/94.

The parties resided and cohabited in various places in Kerugoya District and are domiciled in Kenya. The petitioner has pleaded that since the celebration of the said marriage the respondent has treated the petitioner with cruelty and she has listed 10 instances of cruelty in her petition including assault beatings threats of violence even of death, abusive humiliation in presence of children and other people. The petitioner has suffered personal injuries to the chest and left hand elbow.

In support of her petition the petitioner gave evidence in court. On the hearing date the Respondent who was duly served did not appear. The petitioner testified that since the year 2002 the parties have not cohabited together. This petition was filed on 30/1/2002 after the petition was filed the parties have obtained interlocutory orders namely:-

1. On 21/2/2002 the parties recorded consent order that petitioner be no longer bound to cohabit with the respondent pending the hearing of this petition.

2. Care control and custody of the two children of the marriage be granted to the petitioner pending the hearing of the petition.

3. That the Respondent keep off the property **Inoi/Kerugoya/2010** the property of the petitioner

This means that for the last four (4) years the parties have been living separate lives and pursuing their separate professions, the petitioner is a practicing advocate while the Respondent is a Teacher. The children are residing with the petitioner in her house. Exhibit 5 is an Extract of Police O.B report dated 21/1/2002 which features report by the petitioner against Respondent on issue of a motor vehicle, threatening to kill, obstructing another vehicle with intent to cause an accident, drunk and disorderly behaviors. In her oral evidence the petitioner explained that at the material time her parents came to her home at night for her mother to be taken to hospital, it was at night and when the Respondent woke up and saw them he said “**you dog what do you want here**”. He tried to stop Petitioner from taking the parent to hospital. However thereafter as she was taking the mother to Kerugoya Hospital she saw a vehicle KAG 986 U, their car, which was driven by Respondent in such a manner that it had an accident with KAJ 325 E in which the Petitioner and her parents were traveling and caused it to roll. Thereafter the petitioner thought and felt that her life and that of her children was in danger as the Respondent was attacking the children. She filed this suit.

I have read the petition which is verified on oath. I have also perused the answer to the petition filed by the Respondent where he denies particulars of cruelty as itemized under paragraph 8 of the petition and he alleges that it was petitioner who has been cruel to him. He prays that the petition be dismissed and that the matrimonial property specified be shared equally between the petitioner and the Respondent and that the children be at liberty to choose where to stay after divorce. Regarding the properties the petitioner has exhibited Green Card for **Plot No. Inoi/Kerugoya/2010** which is registered in her name. This is where she resides with her two children. That property is prima facie her own property and she has a right to continue residing thereon undisturbed by the Respondent. Regarding other properties mentioned by the Respondent namely:-

Inoi/Kerugoya/1430

Inoi/Kerugoya/1025

Plot No. 19 Kerugoya Municipality

The parties shall make application within the next 30 days for hearing claims as to ownership of these properties.

I am satisfied that the petitioner has proved her divorce petition on the ground of cruelty. I declare decree Nisi to issue to be made absolute after expiration of 4 weeks. I also make the following orders:-

1. The marriage between the parties both customary and statutory is hereby dissolved.
2. The custody care and control of the two children of the marriage is hereby granted to the mother (the Petitioner). Father shall have reasonable access.
 - 2 (a) Respondent shall pay to the respondent Shs.10,000/= per month for their maintenance.
 - 2 (b) The Respondent shall contribute one half of fees required for education of each child school fees so long as the children require schooling.
3. The Respondent shall pay to the Petitioner permanent maintenance in the sum of Shs.1000/= per month. Parties at liberty to apply.
4. The Respondent is hereby ordered to stay away and is restrained from entering property **Inoi/Kerugoya/2010** the residence of the petitioner and her children.

The costs of this suit shall be paid by the Respondent.

It is so ordered.

Dated this 8th March, 2007

Read in open court.

J. N. KHAMINWA

JUDGE