



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
(MILIMANI LAW COURTS)
DIVORCE CAUSE 65 OF 2006

RMN.....PETITIONER

VERSUS

FWN.....RESPONDENT

JUDGMENT

The Petitioner herein seeks dissolution of her marriage with the Respondent solemnized on 23rd May, 1981.

The divorce cause was certified as an undefended cause and the Petitioner took the stand before me to prove her claims.

She has alleged in her petition that; **(a)** the Respondent has treated her with cruelty, has ignored and abandoned his obligations in the matrimonial home, **(b)** since October, 1995 the Respondent has been guilty of constructive desertion and, **(c)** the Respondent has since the celebration of the marriage with the Petitioner and during the period of the said marriage, committed adultery, with one JK and has also committed adultery with other women.

In her petition the particulars of the aforesaid allegations have been mentioned.

In her unwavering and simple testimony, the Petitioner described various places in Kenya and in Canada the couple cohabited. The marriage bore three sons who are now aged 24 years, 21years and 16 years. She produced certified copies of their respective Birth Certificates as well as the marriage certificate.

Both of them are residents of Kenya. The Petitioner is a civil servant and lives with all the children catering for all their emotional and material needs.

After their arrival back to Kenya from Canada the marriage started being on rocks. The Respondent totally abdicated his duty and hardly stayed at matrimonial home. He neglected or refused to maintain the family.

He withdrew his mental, physical and financial support to her and the family.

When she asked the Respondent about his constantly being out, he would not respond and then she learnt about his extra-marital affairs specifically with his colleague named JK who got pregnant by him and gave birth to a female child named RW after his mother.

These facts affected her. She was under severe mental anguish which in turn affected her duties at home and at work. She begged for a posting outside Kenya in July, 1995 and eventually her request was granted in October, 1995. She went with the children but the respondent did not. He accompanied the family earlier when they went to Canada.

According to her, since 1994 the Respondent had no conjugal relations with her and since October, 1995 she was forced to leave the matrimonial home due to cruelty, neglect and unfaithfulness of the Respondent. She rued that if she did not leave the home, she would not have been able to carry on with her life and work. She had reached the limits of her tolerance and his actions resulted in extreme mental anguish and distress.

She denied she was accessory to the actions of the Respondent and that she connived at or condoned the acts of cruelty, constructive desertion and adultery.

She also denied that she has presented and prosecuted this petition in collusion with the Respondent.

Her evidence and also her averments in the petition remained uncontroverted. I was impressed with her forthrightness while giving her testimony.

The acts of cruelty to be sufficient for the decree of dissolution has to be serious and weighty. I do find that the acts of neglect to the Petitioner and the family without any reasonable cause are serious and they affected the mental health of the Petitioner and thus became weighty. I also note that a spouse is not expected to suffer lack of care and comfort from the other spouse. The acts of the Respondent were not usual wear and tear of a married and family life.

Thus I do find that the Respondent treated the Petitioner with cruelty.

Coming to the averments of desertion, I do note that a spouse does not desert another spouse only when he/she throws the other out of the matrimonial home. When a spouse makes it impossible by his/her acts to enable another spouse to continue living under one roof and the other spouse leaves the house under distress, it is called constructive desertion and I also find from the evidence that the Respondent constructively deserted the Petitioner by his acts of total neglect.

Lastly, as regards her allegation of acts of adultery committed by the Respondent specially with one Ms JK I do note that the Respondent has not filed an answer and her evidence before the court also remained uncontroverted.

From the circumstances coupled with her candid evidence as to extra marital relation with the aforesaid named person, I do find that the Respondent also committed adultery during subsistence of marriage.

In the premises aforesaid, I do order that the marriage solemnized between the Petitioner and the Respondent herein be dissolved.

Decree nisi be made absolute within 60 days from the date hereof.

In the circumstances of the case, I do also order that the Respondent pays the costs of the petition.

Dated and signed at Nairobi this 2nd day of March, 2007.

K.H. RAWAL

JUDGE

2.3.07