



REPUBLIC OF KENYA

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

Divorce Cause 69 of 2006

S.M.N PETITIONER

VERSUS

S.M.M1ST RESPONDENT

B.K.G 2ND RESPONDENT

JUDGMENT

The husband filed this petition to dissolve this marriage with the 1st Respondent on the grounds of her adultery and desertion.

He has also cited the person with whom the 1st Respondent is alleged to have committed adultery. Despite service of this petition to both the respondents, they have failed to file their respective Answers and hence the learned Deputy Registrar has certified this cause as an undefended one.

The Petitioner's testimony revealed that their marriage took place on 22nd December, 1992 and that they both are residents of and domiciled in the Republic of Kenya. During the marriage they cohabited at places in Buru Buru and Athi River up to the year 2002. They have two children of marriage and they share their custody, care and control. He pays their school fees as well as their maintenance.

The problem arose when the Respondent, in November 2002, informed the Petitioner that she was going to visit a friend whose husband had died as she was unable to attend his funeral. The friend lived in Nyeri. She was supposed to go to Nyeri with another friend called P. He escorted her to a place near Kenya Cinema, Nairobi, from where Pamela picked her up. As per the arrangement between the two, the Respondent was supposed to call him on reaching Nyeri and was to return to Nairobi on Sunday. The next day she did neither.

He received some information over a telephone call that the Respondent was lying to him and that she spent the weekend with the 2nd Respondent herein. He called her friend at Nyeri whom she went to console and was told that the Respondent had not come to her.

On next day over the lunch time, the Respondent and P came to his office and when he asked them whether they had really been to Nyeri, she insisted she had gone to Nyeri only. But when he confronted her with the name of the 2nd Respondent, both of them took to their heels and since that day the Respondent had not come back to him and till to-date she has not explained her act of adultery and/or desertion.

He denied that he was accessory to her acts of adultery and desertion. He also testified that he has neither connived at nor condoned the said actions and that he has not presented or prosecuted this petition in collusion with her.

This is the evidence before me, which is not questioned.

I also noted the Petitioner's demeanour during his testimony and I find him a creditworthy witness.

The Respondent, by running away when confronted by the Petitioner, has tacitly accepted that she had committed adultery with the 2nd Respondent. Her further action of not coming back to the matrimonial home also confirms my observation and finding.

I thus find that the Respondent committed adultery during subsistence of marriage with the 2nd Respondent and deserted the Petitioner.

In the premises, I order that the marriage solemnized between the parties be dissolved.

Decree nisi be made absolute within 60 days.

Cost was not asked for and I do not grant the same.

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

K.H. RAWAL

JUDGE

2.3.07