



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

Divorce Cause 61 of 2005

J N M PETITIONER

VERSUS

A W K RESPONDENT

JUDGMENT

The Petition for dissolution of marriage was filed by the husband alleging that the wife had treated him with cruelty since the celebration of the marriage.

The wife in her answer denied the allegations made against her and filed the cross-petition seeking dissolution of the marriage on the ground of acts of cruelty meted to her by the husband.

Both testified before the court and some agreed facts emerged from the evidence so adduced. They both are police officers and have a female child of the marriage born on 11th June, 1996 and named as Faith Robi. The parties have separated and not living together since 2000. They both agreed that their marriage solemnized on 12th April, 1995 is irrevocably broken without any hope of reconciliation. They both urged to grant the order of dissolution of the marriage on their grounds.

The Petitioner testified that after the marriage they lived as husband and wife at GSU Headquarters of Presidential Escort Camp from the year 1995 to 2000. He moved to High Ridge area in Nairobi in the year 2001 but the wife had moved to Migori Division in the year 2000 and thereafter she moved to Kiisi. She was placed on duty in those places.

According to him, the wife has never been cooperative and used nasty words against him. Her own mother warned her not to use such language. She was also alcoholic and sent him very abusive messages through mobile (S.M.S).

While she was at Migori, they continued cohabitation but when she was transferred to Kiisi she filed a divorce case before P.M's court Kiisi which was Divorce Cause No.15 of 2000. Since then she deserted him. She alleged in that cause that he had threatened her with a pistol and explained that it could not be right as he was attending a Corporal Training course and he was not allowed and/or required to keep a firearm.

His efforts to reconcile the marriage were thwarted by her as she would end up using abusive language in the meetings. Thus, according to him, the wife has deserted him since 2000 without reasonable cause and have been cruel to him when she abused him and deprived him of the comfort and company of a spouse.

In cross-examination he reiterated that it was the wife who frustrated the marriage. He denied having any extra-marital relation and also that the wife only drank in his company either outside or inside their house.

He was asked about his care towards the child and said that she was left with him when the wife was transferred to Migori. The custody order which was given to her revoked. Thereafter she was given the same when he went to Israel. He denied to have been abusive to the wife or having beaten her.

The wife testified that in 1999 with mutual consent, she got transferred to Migori so that she could build her house in the rural home. She was then transferred to Kiisi. Around the year 2000, the husband started alleging unfaithfulness against her and took away their child from her without her consent. She then got some information that her husband wanted to marry another woman and then she filed a divorce cause and prayed also for order of custody. The husband had refused to maintain either her or their child since she moved to Kiisi. It is only after the consent order recorded that he is paying her school fees.

The husband had also never visited her when she was in Mombasa. He exhibited suspicious attitude and while staying together, he would ask questions to the guard as to her movement. When the guard informed him that she was away whole night he would then provoke her and then beat her. According to her she would be on duty and her request to check the roster was not agreed by the husband.

According to her, he was a bad husband and she was not accessory to his acts of cruelty and that she has also not condoned those acts.

In cross-examination she agreed she did not name any women, in her petition, he was alleged of having extra-marital relation with. She did not also file any complaints to the authority as regards his acts of cruelty lest he would lose his job. She at the end agreed that he has good relation with their daughter.

This in short is the evidence before me. The acts of cruelty to become a ground of dissolution of the marriage have to be serious and weighty which affected either mental or physical health of the other spouse. However in this unique case, their staying apart, which was as a result of the transfers of the wife which were requested due to rocky status of their marriage, made the marriage totally vulnerable. The wife in her evidence has not challenged the allegation of her abusive language and alcoholism and on the contrary which has been implicitly agreed when she testified that the husband would provoke her. The long separation of the wife from home also has affected the lives of both the spouse. The end result whereof was that the marriage has been broken down completely.

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

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

Dated and signed at Nairobi this 24th day of April, 2007.

K. H. RAWAL

JUDGE

24.4.2007