



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAKURU**

**Divorce Cause 4 of 2005**

**JIMMY MAINA THAMU.....PETITIONER**

**VERSUS**

**FLORENCE WANJIRU.....RESPONDENT**

**JUDGMENT**

The petitioner, Jimmy Maina Thamu filed a petition seeking to have the marriage solemnized between himself and the respondent, Florence Wanjiru on the 17<sup>th</sup> May 1997 at St. Michael's Catholic Church Kiamaina in Nakuru District annulled. The petitioner averred that since the celebration of the said marriage, the respondent had treated him with cruelty and had further inexplicably deserted from the matrimonial home at various times between the year 2000 and the year 2005. He further averred that the respondent was guilty of committing adultery with various men including one Mwaura. The petitioner particularised the cruelty that he says he was subjected to in his petition for divorce. The petitioner claims *inter alia* that the respondent had subjected him to mental anguish and humiliation by referring him as a devil worshipper and a murderer in the presence of their children and their neighbours.

He further averred that the respondent had told one of their children that the petitioner was not his biological father with a view to inciting the said child to cease having respect for him as his father. He further pleaded that since the celebration of the said marriage, the respondent had denied him his conjugal rights and had thus caused him to suffer mental anguish. The petitioner averred that all efforts to be reconciled with the respondent had been frustrated by the respondent who was unwilling to participate in the reconciliation attempts. The petitioner therefore averred that the said marriage had irretrievably broken down and should therefore be annulled by this court. The petitioner pleaded to be given reasonable access to the children of the marriage. He further prayed for costs of the proceedings.

The petitioner duly served the petition for divorce to the respondent. An affidavit of service evidencing the fact that the said petition had been duly served was filed in court. The petitioner sought directions before the Deputy Registrar of the court who directed that the petitioner be allowed to proceed with the hearing of his petition for divorce. At the hearing of the petition for divorce, this court was satisfied that the respondent was properly served and therefore ordered the petitioner to proceed with his petition for divorce, the absence of the respondent notwithstanding.

The petitioner called one witness, himself. He testified that he was a secondary school teacher currently teaching at Bahati P.C.E.A. Girls Secondary School. He testified that he got married to the respondent under the Kikuyu Customary Law in 1992. The said customary marriage was later formalised when the petitioner and the respondent got married at the St. Michael's Catholic Church, Kiamaina in Nakuru District in 1997. The petitioner stated that their marriage was blessed with four children namely Nicholas Thamu born in 1992, Rose Wakahu born in 1994, Kennedy Kagai born in 1998 and Faith Wairimu born in 2000. The petitioner testified that he cohabited with the respondent at Engashura Farm between 1992 to 2001.

The petitioner recalled that their marital problems started when the respondent gave birth to their last born. He testified that the respondent inexplicably left the matrimonial home and relocated to her parents. She left the children with the petitioner. He testified that the respondent had deserted the matrimonial home for various periods, in some instances upto four months without any reasonable explanation. When the petitioner sought to have the respondent return back to the matrimonial home, the respondent claimed that the petitioner was a devil worshipper. She further claimed that the petitioner was

not the biological father of their first born who was particularly close to the petitioner. He further testified that the respondent assaulted him in the presence of her brother without any reason. He recalled that the respondent had denied him his conjugal rights since the year 2001. He stated that the respondent moved to a separate bedroom in that year and did not return back to the matrimonial bed.

The petitioner testified that in 2004, he discovered that the respondent was having an affair with one Mwaura who was a member of their church. When the petitioner confronted the respondent, the respondent confirmed that she was having a sexual liaison with the said Mwaura. The petitioner produced in evidence an exercise book which he recorded the various instances when the respondent disappeared from the matrimonial home and committed various matrimonial offences. The petitioner recalled that all the efforts to be reconciled with the respondent had been in vain. He narrated the instances when the matrimonial dispute was referred to the Chief at Bahati and also the Chief at Londiani with a view of promoting reconciliation which however proved futile. He testified that, in his view, the marriage had irretrievably broken down and should therefore be dissolved. He stated that the respondent left him with the custody of the children. He sought to be given legal custody of the children. He further prayed to be awarded the costs of the suit.

I have considered the grounds in support of the petition for divorce presented to this court by the petitioner. The evidence of the petitioner in support of the petition for divorce is uncontroverted. He has testified that the respondent deserted the matrimonial home in the year 2001 and left the children of the marriage with him. He has further testified that the respondent had treated him with cruelty by making spurious and false allegations that he was a devil worshipper and a murderer. He further testified that the respondent made unsubstantiated allegations that their first born was not his biological child with a view of undermining the close relationship that exists between the petitioner and their said child. He further testified that the respondent had since the year 2001 denied him his conjugal rights. He alleged that the respondent had committed adultery with one Mwaura who is a member of their church. The petitioner produced an exercise book in evidence which lists the instances which the respondent had committed matrimonial offences including deserting from the matrimonial home. In the said exercise book, the petitioner has also listed instances when he attempted to be reconciled with the respondent. These reconciliation efforts proved to be in vain.

It is clear from the foregoing, that the relationship between the petitioner and the respondent has deteriorated to the extent that it would be a miracle to expect that the petitioner and the respondent would live harmoniously together under one roof as husband and wife. It is apparent that there is no trust between the petitioner and the respondent. The petitioner's patience with the respondent has been exhausted. He no longer wishes to sustain a marriage which in all material aspects only exists in paper. From the testimony of the petitioner it is clear that the marriage between the petitioner and the respondent has irretrievably broken down. There is no chance that the same can be salvaged by the petitioner and the respondent being reconciled. This is due to the fact that all the efforts to promote reconciliation, either with the assistance of their respective parents or with the assistance of the Provincial Administration have been in vain. As stated earlier at the beginning of this judgment, the testimony offered by the petitioner in support of his petition for divorce is uncontroverted. I therefore hold that the petitioner has proved, on a balance of probabilities, that he is entitled to the prayers sought in his petition for divorce.

In the premises therefore, it is hereby declared that the marriage solemnized between the petitioner and the respondent on the 17<sup>th</sup> May 1997 at St. Michael's Catholic Church, Kiamaina in Nakuru District is hereby dissolved. Decree Nisi is hereby issued granting the said petition for divorce sought by the petitioner. The Decree Nisi shall be made absolute within three months of a copy of the said decree nisi being served on the respondent. The petitioner shall have the custody of the children of the marriage. The respondent shall however be at liberty to make an appropriate application before this court as to visitation rights to see the said children. There shall be no orders as to costs.

**DATED at NAKURU this 9<sup>th</sup> day of May 2007.**

**L. KIMARU**

**JUDGE**