



REPUBLIC OF KENYA

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

Divorce Cause 101 of 2006

DORCAS NGINA MUYA.....PETITIONER

VERSUS

JOHN KINYANJUI NJENGA.....RESPONDENT

JUDGMENT

Before me is a petition filed by the petitioner DORCAS NGINA MUYA for dissolution of marriage. The petition is dated 19th July 2006 and was filed on the same date. The respondent is named as JOHN KINYANJUI NJENGA. According to the petition, the petitioner and the respondent were married before the Registrar in Nyeri on the 25th April 1991. The couple then cohabited as husband and wife in Nyeri. It is also averred in the petition that both the petitioner and the respondent are domiciled in Kenya. The grounds for seeking dissolution of marriage are adultery and cruelty. Particulars of adultery and cruelty were given in the petition.

The respondent appears to have been served on 26th July 2006. He however, neither entered appearance nor filed an answer to the petition. The petition therefore proceeded to hearing as an undefended cause.

At the hearing, only the petitioner testified. It was her evidence that she was a jua kali businesswoman at Kitengela. That she got married to the respondent in April 1991. She had filed, with the petition, a certified copy of the marriage certificate. She filed the petition for dissolution of marriage because, since 1997, the respondent had chased her away from the matrimonial home. He was currently living with another woman, and therefore she wanted the court to dissolve the marriage. It was her evidence that there was no issue of the marriage.

I have considered the petition filed and the evidence tendered before me in court.

The first issue I have to consider is whether there was a marriage subsisting between the petitioner and the respondent, as at the time that the petition was presented in court. The evidence of the petitioner on the existence of the marriage is uncontroverted. I have seen the certified copy of the marriage certificate for the marriage between the petitioner and the respondent. It is my finding that, indeed, at the time of the presentation of the petition in court, there was a valid marriage subsisting between the petitioner and the respondent that was capable of being dissolved.

The petitioner has asked for dissolution of marriage on the grounds of adultery and cruelty. Both are valid grounds for dissolution of a marriage as provided for under Section 8 of the Matrimonial Causes Act (Cap. 152) the pertinent parts of which provide –

“8(1) A petition for divorce may be presented to the court either by the husband or the wife on the ground that the respondent –

(a) has since the celebration of the marriage committed adultery.

(b) has since the celebration of the marriage treated the petitioner with cruelty”

From the evidence before me, I am satisfied that the petitioner has proved that the respondent has committed cruelty. The fact that the respondent chased away the petitioner from the matrimonial home in December 1997, is clearly an act of cruelty. From 1997 to 2006, when the petition was filed is a period of excess of five (5) years. The respondent has also not been caring for the petitioner. That also amounts to cruelty. All these defaults of the petitioner established cruelty, and the marriage can be dissolved on that account.

On adultery, I find that the petitioner has not adduced evidence to prove adultery against the respondent. Though under section 9 of the Act a woman, in petitioning for divorce, is not required to join the third party who has committed adultery with her husband, it is imperative that she gives facts that prove the allegation of adultery. At least the petitioner she should have given evidence as to when and where the respondent was living with another woman. She should have given the source of her information, or how she came to know that the respondent was living with another woman she should also have given evidence that in fact, there is an issue of that illicit liaison as alleged. In the absence of such evidence, this court is left to speculate. I will not speculate on that. I find that the petitioner has not proved that the respondent committed adultery. That ground for dissolution of marriage fails.

I have found that the petitioner has proved that the respondent committed acts of cruelty. I take note that the respondent chased away the petitioner from the matrimonial home since December 1997. The two have been living separately since then. It is therefore my finding that the marriage has broken down irretrievably. It is also my finding that the petitioner has not colluded or connived with the respondent in bringing this petition. I will therefore have to dissolve the marriage.

The petitioner has asked for costs of the proceedings. I will not award her costs against the respondent as the respondent has not either filed an answer to the petition, nor has he defended himself.

For the above reasons, the petition for dissolution of marriage succeeds and I order as follows:-

1. The marriage between the petitioner and the respondent be and is hereby dissolved.
2. A decree nisi for divorce do issue forthwith to be made absolute after the lapse of three(3) months.
3. The petitioner will bear her own costs of these proceedings.

It is so ordered.

Dated and Delivered at Nairobi this 7th day of May 2007.

GEORGE DULU

JUDGE