



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

Divorce Cause 151 of 2005

S K PETITIONER

VERSUS

J W K..... RESPONDENT

JUDGMENT

By petition dated 30.01.06 the petitioner prayed for the following orders:-

- a) That the marriage between the petitioner and respondent be dissolved.
- b) That the respondent do pay the petitioner alimony in such sum as the court may deem fit to grant.
- c) That the respondent do pay the costs of this petition.

At the hearing of the petition on 07.06.07, the petitioner was represented by learned counsel, Mrs. N. Kinyanjui while there was no appearance for the respondent.

Petitioner's counsel informed the court that on 12.04.06 she telephoned the respondent and asked him to come to her (counsel's) office. Counsel called the respondent on his mobile telephone number which had been provided by the petitioner. There in the petitioner's counsel's office the respondent was served with the divorce papers but he neither entered appearance nor filed answer to the petition. There is an affidavit of service by Kennedy K. Njuguna sworn on 19.04.06 deposing that he as a court clerk in the firm of N. Kinyanjui & Co. Advocates did on 12.04.06 serve the respondent with the petition and that the respondent acknowledged receipt at the back of his (Njuguna's) copy. There is annexed to the court clerk's affidavit of service a notice requiring the defendant to enter appearance within 8 days of service and thereafter make answer to the petition. There is neither a memorandum of appearance nor an answer to the petition in the court file. I accept that the respondent did not file any. This matter, therefore, proceeded as an undefended cause.

Only the petitioner testified in this cause and her evidence may be summarized as under.

The petitioner and respondent got married to each other on 07.01.78 at the Registry Office in Uckfield, Sussex, United Kingdom. She and the respondent already had one child together before they got married, i.e. M K (girl) born on 08.12.74. She is now 32 years old. Subsequently the petitioner and respondent got other children, i.e. N K (girl) born on 20.09.78 now aged 28 years and N K (boy) born on 01.03.81 now aged 26 years.

The petitioner has accused the respondent of cruelty and desertion. Incidents of cruelty cited tended to be generalized and seemed to revolve around petty differences between the petitioner and respondent but

somehow the parties could not resolve those differences. It was upon the court's prompting that the petitioner cited incidents of beatings inflicted upon her by the respondent in 1978 and around 1983/1984. The petitioner also, *inter alia*, complained of the respondent having taken at least one bank loan using family property without deliberating with the petitioner in any way. No particulars of the loan in question or the family property used as security therefor were furnished by the petitioner. The general picture emerging from the petitioner's averments points to the parties as having developed coldness towards each other and eventually parting ways. According to the petitioner, the respondent made the home so uncomfortable that the petitioner eventually moved out of the matrimonial home, never to return. The petitioner blames the respondent for her moving out of the matrimonial home – in other words, she accused the respondent of constructive desertion.

The petitioner is a former British citizen who became a Kenyan by naturalization in 1984. She has lived in Kenya since 1978 except for isolated periods here and there when she went out of the country for one reason or another. The petitioner testified that she and the respondent stopped living together since September, 1999.

The petitioner teaches English at the Language Centre near Adam's Arcade, off-Ngong Road, Nairobi where she earns approximately Kshs.50,000/= per month depending on the hours she works and the lessons she teaches. She told the court that the respondent is a Kenyan of the African race and that she moved out of the matrimonial home first and that the respondent also left thereafter. She does not know the respondent's whereabouts but said that the last time she spoke to him he said he was in Djibout. She said she believes the respondent is out of the country and that she does not get any financial support from him. All the children between the petitioner and respondent are now adults.

I have given due consideration to the petitioner's case.

The evidence on record establishes that the respondent was served with the petition but filed no memorandum of appearance or filed answer to the petitioner. The petitioners' above accusations, therefore, remain uncontroverted. I accept that the petitioner committed the matrimonial offences of cruelty and constructive desertion. Each of those grounds entitles the petitioner to the divorce sought. Accordingly, I pronounce a decree of divorce and order that the marriage between the petitioner and respondent be and is hereby dissolved. Decree *nisi* shall issue forthwith, the same to be made absolute after expiry of the statutory period of three months upon application therefor. As no evidence of the petitioner's earnings, if any, or of his whereabouts was furnished, I am unable to issue any order for payment of alimony and I issue none. I award the petitioner the costs of the petition.

Orders accordingly.

Delivered at Nairobi this 28th day of June, 2007.

B.P. KUBO

JUDGE