

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Divorce Cause 149 of 2005

D O O PETITIONER

VERSUS

G A ORESPONDENT

J U D G E M E N T

The petitioner and the respondent got married to each other on 10.5.1986, apparently under customary law. On 1.10.1988 they solemnized their marriage under the Marriage Act at the Church of Our Lady of Mercy of the Visitation, Nairobi where they obtained a marriage certificate Number *[particulars withheld]* of the same date – exhibit I.

The evidence from the Petitioner, D O O was that the two got five children of whom one died, two are minors and two are adults.

According to the petitioner's evidence, the respondent cultivated loose morals during their marriage. He testified that on 24.12.1994 the petitioner slept at Huruma Estate in the house of her boyfriend who was a workmate. When confronted by the petitioner on the issue, she admitted that she committed adultery with the boyfriend known as J O and not once but on several occasions. That when the Petitioner insisted to know why she was behaving that way, She threatened to stab him with a knife. That a few days later the respondent eloped the said J O and escaped to Nyanza Province until 1996 when she showed up briefly. She declared then that she loved J O more and that he was the right husband for her. She left never to return.

The petitioner accordingly seeks the dissolution of the marriage on adultery, cruelty and desertion all which he claims, he has never forgiven nor condoned. He also asserted that he never connived with the respondent to bring these proceedings.

The respondent failed to file an answer to the petitioner's petition and also failed to attend court during the hearing to seek leave to defend.

In the above circumstances I have the Petitioner's evidence on the record as the only evidence I may act on. I have considered the Petitioner's evidence and I am satisfied that it proves adequately that the respondent committed adultery. She also committed cruelty when she threatened to stab the petitioner with a knife. She finally committed desertion when she eloped with another man and has never since returned to her matrimonial home to live with the petitioner in case he could accept her back.

For the above reasons I am fully persuaded that this marriage no longer has value to the parties and in view of the fact that the grounds of divorce, cruelty and desertion have been proved, it should be dissolved. The court finds the following orders appropriate: -

ORDERS

1. The marriage between D O O and G A O entered into on 1.10.1988 is hereby dissolved, and a decree nisi to last six months shall issue.
2. The petitioner to apply for a decree absolute after six months.

3. No order as to costs.

Dated and delivered at Nairobi this 26th day of July, 2007.

D A ONYANCHA

JUDGE