



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
(MILIMANI LAW COURTS)
DIVORCE CAUSE 45 OF 2006

KARL BARRIE SWINIMERPETITIONER

VERSUS

TERESA PREYE SWINIMERRESPONDENT

JUDGMENT

KARL BARRIE SWINIMER, (K.B.S) petitioned for divorce from his wife **TERESA PREYE SWINIMER**, on grounds of desertion whose particulars he detailed in paragraph 7 of the petition, and cruelty pleaded in para 8.

The respondent appointed an advocate who entered appearance on her behalf, but subsequently failed to file an answer.

The cause was therefore certified undefended by the Deputy Registrar. The couple got married on 25th August 1998 at the office of the Registrar General in Nairobi. They lived and cohabited in places shown in para 2 of the petition.

There are no children of the marriage.

The petitioner, a Canadian, has been living in Kenya continuously since 2000, working with the United Nations, as a Management Consultant.

The petitioner produced the original marriage certificate in court. He testified that the marriage was good for only a few months, but the situation soon deteriorated because his work required him to be away in Lebanon for a period of 2 – 3 months. His wife accompanied him for the 1st trip, but stayed in Lebanon for only one week, as she did not like the country.

The couple then established a home in Nairobi, but the petitioner continued to travel to Lebanon.

The petitioner returned from Lebanon in March 2003, and found his wife missing from the house. Later he discovered that she had gone to Canada, as her residence permit had been successfully processed at her instance. She did not inform the petitioner about it. Later she sent an email message to the petition to say

she would not come back and was no longer interested in the marriage.

The petitioner had had vasectomy. His wife was aware of it and accepted it at the beginning, but subsequently changed her mind and started urging for children.

The petitioner also complained that his wife was cruel to him, as she kept making derogatory comments about Lebanon whenever they were with friends. She also accused him of being unfaithful, a charge she denied.

Further, his wife wanted him to give up his job in Lebanon, but this he refused to do.

The petitioner 1st met his wife in Nigeria, her home country. Subsequently they moved to Nairobi Kenya, where they got married.

The petitioner denied having colluded with his wife to bring this petition, and further stated that she has not condoned his wife's cruelty.

From the evidence on record and the submissions, I am satisfied that the respondent deserted the petitioner with no just cause for a period of 3 years immediately preceding the presentation of this cause.

The respondent who appointed a firm of lawyers to represent her failed to file an answer after entering appearance.

I consider the act of desertion alone to amount to cruelty, but there was the further evidence of the respondent teasing her husband about Lebanon, whenever they were entertaining friends. That surely amounted to an act of cruelty on her part. I find that it is this cruelty which caused the break down of the marriage between them. I found no evidence of collusion or condonment of this act on the part of the petitioner, and I hereby proceed to grant an order dissolving the marriage between the petitioner and the respondent.

I direct the decree nisi to issue straight away today, and the same to be made absolute within a period of one month thereafter.

Dated at Nairobi this 27th day of September, 2007.

JOYCE ALUOCH

JUDGE