



REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
DIVORCE CAUSE 8 OF 2007

M J BPLAINTIFF

VERSUS

H M NDEFENDANT

J U D G M E N T

M J B , filed the petition dated 13th April 2007 against **H M N** on 13th April 2007 for dissolution of the marriage.

The petitioner's marriage to the respondent was conducted at the District Commissioner's office at Malindi in the Republic of Kenya under and in accordance with the Marriage Act [Cap 150] Laws of Kenya. A certificate of marriage No. 053681 was consequently issued by the presiding Registrar of Marriage.

Subsequently, the petitioner and the respondent commenced cohabitation as husband and wife at Driftwood Beach Club, Malindi for 30th April 2003. Both the petitioner and respondent at the time of filing of the petition have been domiciled in Kenya. There are no issues of the marriage.

The petitioner seeks dissolution of the marriage on grounds of cruelty and desertion as particularized in paragraph 6 of the petition. Upon being served with a copy of the petition and notice to appear the respondent opted not to enter appearance. In accordance with Rule 29(2) of the Matrimonial Causes Rules the Petitioner applied for and obtained the Registrar's certificate as undefended cause on 26th September 2007.

Subsequently the petitioner set down the undefended cause for hearing within 6 months after the granting of the registrar's certificate as enjoined by law.

In his testimony the petitioner, **M J B** , averred that they got married on 30th April 2003. The petitioner was then a divorcee while the respondent was a widow. Thereafter they cohabited at Driftwood Club Malindi. That since the celebration of the marriage the respondent has exhibited traits of cruelty, disrespect, dishonesty and arrogance to name but a few. The respondent has continually and persistently raised false allegations of assault and abuse as against the petitioner. The respondent has been concocting all sorts of allegations and claims of neglect and failure of responsibility as against the petitioner as an excuse for desertion. The respondent has persistently denied the petitioner his conjugal rights.

The respondent has rebuffed all attempts towards reconciliation put forward by the petitioner. The respondent has on occasions too many to itemize subjected the couples' matrimonial home to ridicule and disrespect by bringing in strangers and persons of ungovernable characters despite the petitioner's

objection. Last but not least the respondent deserted the matrimonial home in the month of October 2003, six months after the celebration of the marriage.

That the petitioner has not presented this petition in collusion with the respondent. Equally the petitioner and has not connived at, condoned or entertained the cruelty and desertion of the respondent. Consequently, the petitioner seeks annulment of the marriage. He abandoned the prayer in respect of costs.

I have carefully considered the evidence of the petitioner. I have equally enquired into the grounds of dissolution of the marriage.

It is clear to me, on the evidence, that the petitioner and the respondent solemnized their marriage under and in accordance with the Marriage Act (Cap 150) Laws of Kenya. In law such marriage can only be dissolved under and in accordance with the Matrimonial Causes Act (Cap 152) Laws of Kenya.

Section 8 of the Matrimonial Causes Act provides:-

“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; or

(b) has deserted the petitioner without cause for a period of at least three years immediately preceding the presentation of the petition; or

(c) has since the celebration of the marriage treated the petitioner with cruelty; or

(d) is incurably of unsound mind and has been continuously under care and treatment for a period of at least five years immediately preceding the presentation of the petition,...”

On the evidence on record it is clear to me that the respondent deserted the matrimonial home in the month of October 2003. Equally, it is clear to me that the respondent has treated the petitioner with utmost cruelty. In the absence of evidence from the respondent to the contrary, I find as a fact that the petitioner has proved desertion and cruelty on a balance of probability. Accordingly, I pronounce a **decree nisi** of dissolution and order that the marriage between the petitioner and the respondent be and is hereby dissolved.

A **decree absolute** to be pronounced after six months upon the application. Each party to bear his/her own costs. It is so ordered.

DATED and delivered at **Malindi** this **31st** day of **October** 2007.

N. R. O. Ombija

JUDGE

the REgistrar”s certificate as undefended cause on 26th September 2007.

Subsequentlythe
petitioners

Mr. Michira for Gekanana} for petitioner