

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA

Divorce Cause 40 of 2006

DIRK OBENDIEK PETITIONER
- Versus -

SCHIBILSKI NADJA RESPONDENT

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- Versus -

SCHIBILSKI NADJA RESPONDENT

Coram: Before Hon. Justice L. Njagi

Mr. Kithi for Petitioner

N/A for Respondent

Court clerk - Ibrahim

J U D G M E N T

This divorce petition is dated 4th August, 2006 and was filed in court in the same month but on a date which is not indicated on the court date stamp. The petitioner, Dirk Obendiek, prays that the marriage between him and the respondent, Schibilski Nadja, be dissolved; that the respondent be condemned to pay the costs of these proceedings; and such other or further relief as the court may deem just and fit to grant.

By an acknowledgement of service filed in court on 20th July, 2007 under rules 2(3) and 10 of the Matrimonial Causes Rules, the respondent received a copy of the petition and verifying affidavit filed in this cause and a notice to appear. She received these documents on 17th November, 2006, but did not enter appearance, or file any other documents. The hearing of this matter therefore proceeded ex parte.

In his pleadings, the petitioner accuses the respondent of cruelty. He says that the respondent abdicated her matrimonial domestic and financial duties to the petitioner with the specific intention of causing the petitioner to suffer mental and emotional anguish. The petitioner further states that the respondent abandoned the matrimonial home in Mombasa, Kenya, in 2000 and permanently moved back to Germany. Since then, the petitioner has been denied the respondent's consortium, and there is no expectation that she will return to the matrimonial home. The petitioner therefore concludes that the marriage between the parties has irretrievably broken down.

In his sworn oral testimony in court, the petitioner testified that the parties in this cause were both German citizens. They got married on 9th March, 1999, in the Registrar's Office, Mombasa. They were issued with a marriage certificate No. 80615, which the petitioner produced as his exhibit No. 1. The couple lived in Mombasa and at Mtwapa for about one year. During that period, the spouses did not fare well together and they had arguments almost on a daily basis. After one year, towards the end of the year 2000, the respondent left the matrimonial home and returned to Germany against the petitioner's will. Since then, they have been living separately and there is no prospect that they will live together any

more. He thereupon asked the court to grant him a divorce, and added that there were no children of the marriage. Mr. Kithi for the petitioner relied on the petitioner's evidence in urging the court to grant the divorce.

I note from the record that the respondent did not enter appearance or file any documents in this matter. This is a clear indication that she is not interested in this marriage, and wont care less whether divorce is granted. The petitioner's uncontroverted evidence is that the respondent was the unhappy cause of the persistent daily quarrels in the very first year of the marriage. She also left the matrimonial home for Germany, most probably never to come back again, and it is now almost seven years since she left. I find that the respondent is guilty of dissertion which, with the cruel conduct manifested during the very first year of cohabitation, entitles the petitioner to an order for divorce as prayed.

I accordingly make the following orders –

1. The marriage solemnized between the petitioner and the respondent herein at the Office of the Registrar of Marriages, Mombasa, on 9th March,1999, be and is hereby dissolved.
2. Decree nisi to issue.
3. Decree nisi to become absolute after one month.
4. Each party to bear its own costs of this cause.

Dated and delivered at Mombasa this 26th day of October, 2007.

L. NJAGI

JUDGE