



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Divorce Cause 29 of 2004

VN..... **PETITIONER**

VERSUS

SIG..... **RESPONDENT**

JUDGMENT

On 08.03.04 the petitioner filed petition dated 05.03.04 and prayed for the following orders, namely:-

1. That her marriage to the respondent be dissolved.
2. That the petitioner be awarded alimony pending suit.
3. That the petitioner be awarded maintenance.
4. That the petitioner be awarded reasonable custody, care and control of the children of the marriage.
5. That the respondent do pay maintenance and child support for the children of the marriage including school fees, medical, dental and optical.
6. That the respondent ceases intimidating, threatening or using any violence against the petitioner.
7. That the respondent ceases interfering in any way with the petitioner's management of Veeram Restaurant.
8. That the respondent be condemned to pay the costs.

The ground relied upon for the divorce sought is cruelty.

On 07.04.05 the respondent filed answer to the petition and basically denied the cruelty ascribed to him by the petitioner.

At the hearing of these divorce proceedings on 18.10.07, the petitioner was represented by learned counsel, Mrs W.G. Wambugu while the respondent was represented by learned counsel, Mr C.N. Ngugi.

Salient facts pertaining to the divorce proceedings may be stated briefly as under.

The petitioner and respondent initially got married to each other in 1986 under Kikuyu customary law. On 30.11.91 they solemnized the customary law marriage in church under the African Christian Marriage and Divorce Act, Cap. 151. Before and after their marriage, the petitioner and respondent cohabited in Buruburu Nairobi City Council flats from August, 1987 to February, 2004. Two children were born out of parties' aforesaid cohabitation:-

- a) SPG, born on 17.04.87.
- b) SNG born on 01.11.90.

Before oral evidence was tendered in this cause, the parties recorded the following consent orders:-

1. That prayer 4 in the petition be granted as formulated, with visitation rights to the respondent.
2. That prayer 5 in the petition be granted as set out therein but that the maintenance be shared on a 50 – 50 basis between the petitioner and respondent.

The aforesaid consent was made an order of the court.

The petitioner is the only person who gave oral evidence before this court. It was her case that the respondent used to beat her and the children on various occasions and that during one of the beating episodes, her son came to intervene and the respondent bit him with his teeth. According to the petitioner, this incident was on the night preceding 05.01.05. After that incident the respondent left the matrimonial home, (PARTICULARS WITHHELD). Petitioner added that prior to the incident of 05.01.05 she and the respondent used to disagree over something, separate for some time then resume cohabitation. However, after the incident of 05.01.05, the respondent left the matrimonial home for good and has never returned there. The respondent told this court that the respondent's assaults on her outlined above caused her emotional and psychological trauma. According to the petitioner, the marriage between her and the respondent has irretrievably broken down; that reconciliation attempts have failed; that there is no hope of the marriage being salvaged; and that she should be granted the divorce sought. She denied accusations levelled against her by the respondent that she is responsible for the breakdown of the marriage. Petitioner asked for costs of the divorce proceedings and retained the other prayers except prayers 4 and 5 which were granted in a modified form following the parties' consent to that effect.

The respondent did not testify in this cause.

I have given due consideration to the parties' respective pleadings affidavits and rival arguments.

The petitioner levelled various accusations of cruelty in her pleadings against the respondent and also gave oral evidence in support of those accusations. The respondent filed answer to the petition, essentially denying the accusations levelled against him. He did not, however, deem it fit to give oral evidence. That leaves the court with formal evidence in support of the petitioner's accusations against the respondent on the one hand and mere denials by the respondent, in his pleadings, of the accusations levelled against him on the other. I accept the petitioner's evidence that the respondent was cruel to her and find that the matrimonial offence of cruelty has been proved against the respondent. Accordingly, I hereby pronounce a decree of divorce and order that the marriage between the petitioner and respondent herein be and is hereby dissolved. *Decree nisi* shall issue forthwith, the same to be made absolute after expiry of the statutory period of 3 (three) months, upon application therefor. No tangible evidence was tendered before court regarding the parties' respective earnings. The only indication given was that each party was in gainful employment. The final orders in this cause shall be as follows:-

- a) Prayer 1 for dissolution of marriage is granted as prayed.
- b) Prayers 4 and 5 relating to custody, maintenance and control of children are granted as modified

in the parties' consent recorded hereinabove.

c) Prayer 8 relating to costs is granted as prayed.

d) No orders are deemed necessary here and none made regarding prayers 2, 3, 6 and 7.

Orders accordingly.

Delivered at Nairobi this 22nd day of November, 2007.

B.P. KUBO

JUDGE