

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KERICHO

Divorce Cause 12 of 2005

R.C. C.....PETITIONER

VERSUS

S.K.K.....RESPONDENT

JUDGMENT

The petitioner, R.C was married to the respondent, S.K.K on the 19th January 2004 at the District Commissioner's office, Bomet. After the celebration of the said marriage, the petitioner cohabited with the respondent at their matrimonial home at *[particulars withheld]*, Bomet district. According to the petitioner, the said marriage was not blessed with any children. The petitioner complains that since the celebration of the said marriage, the respondent has been cruel to her by abusing her and locking her out of their matrimonial home. She complained that the respondent was guilty of adultery. She averred that the respondent had had affairs with house girls the petitioner employed. She averred that the respondent had threatened severally to kill her. Due to the above reasons, the petitioner was of the view that the marriage had irretrievably broken down with no chance of being salvaged. She further averred that she had sought intervention of several people, including their parents and a member of the clergy, with a view of persuading the respondent to mend his ways. She averred that the said reconciliation efforts were however unsuccessful. She prayed for the marriage between her and the respondent to be dissolved. She further prayed for the costs of the petition.

When the respondent was served, he entered appearance and filed a reply to the petition. He denied that he had been cruel or that he had affairs with house girls employed by the petitioner. He averred that it was the petitioner who had deserted the matrimonial home with a view to precipitating the end of the said marriage. He stated that elders had tried to reconcile them but the petitioner had refused to return back to the matrimonial home. The respondent averred that the said marriage had irretrievably broken down and therefore the same should be dissolved, and the dowry which was paid refunded. The respondent urged the court to condemn the petitioner to pay the costs of the petition.

At the hearing of the petition, the petitioner testified that her marriage with the respondent had broken down because of misbehaviour by the respondent. She testified that the respondent had harassed and threatened her. She recalled that on several occasions the respondent had visited her at her place of work and threatened to kill her. The petitioner testified that the respondent jeopardized her employment by spreading malicious rumours to the hospital administrator. She recalled that the respondent had at one time assaulted her resulting in the respondent being charged and fined for the said assault. She testified that she had sought the intervention of their parents and church elders with a view to having the respondent change his bad ways. Unfortunately, the respondent's behaviour had not improved hence her decision to file the petition for divorce. The petitioner admitted that she had refused to consummate the marriage with respondent due to the respondent's promiscuity. She recalled an instance when the respondent had sexual relationship with their house help called Z. She testified that since 2005, they had been separated. In her opinion, there was no chance that the said marriage could be salvaged. She therefore prayed for the court to dissolve the said marriage.

When the respondent testified before court, he stated that it was the petitioner who had rendered the said marriage irretrievably broken down due to the fact that she had denied him his conjugal rights. He

maintained that it was apparent that the petitioner had married him to enable her to retain her employment with [particulars withheld] which discouraged female employees from having children if they were unmarried. He testified that elders had tried to reconcile them but the petitioner was the one who was the impediment to reconciliation. The respondent complained that the petitioner had unfairly treated him because she had failed to recognize him as her husband. He testified that although he loved the petitioner, he was willing to let her go provided the dowry which was paid to the family of the petitioner was refunded to him. He also asked the court to order the petitioner to refund him the wedding costs which he assessed at Kshs. 400,000/=.

I have considered the pleadings filed by the parties in support of their respective positions in these divorce proceedings. I have also considered the evidence that was adduced by the petitioner and the respondent. It is clear from the said evidence adduced before this court that the marital relationship of the petitioner and respondent has hit the rocks. The petitioner and the respondent have been separated for the past two years. The petitioner made allegations of unfaithfulness on the part of the respondent. On his part, the respondent was aggrieved that the petitioner denied him his conjugal rights even after he had agreed to be tested for HIV/AIDS. It is evident that the petitioner cannot stand the respondent near her due to the mistrust that developed between them particularly when the petitioner formed the opinion that the respondent was adulterous. On his part, the respondent claimed that the petitioner had deserted from the matrimonial home and was residing at her place of work. The marriage between the petitioner and the respondent was not blessed with any children. It is clear that, taking into account the plethora of the complaints that the petitioner and the respondent have made against each other, the only sensible thing that this court can do in the circumstances is to grant them their wish to live apart from each other.

The petitioner and the respondent cannot be reconciled. All effort to reconcile them has been in vain. The gulf between the petitioner and the respondent cannot be bridged. In the premises therefore, I do declare the marriage that was solemnized between the petitioner and the respondent on the 19th of January 2004 at the District Commissioner's Office at Bomet be hereby dissolved. A *decree nisi* is hereby issued granting the petition for divorce filed by the petitioner. The said *decree nisi* shall be made absolute three months from today's date.

The respondent pleaded with the court to order the family of the petitioner to refund the dowry paid when he married the petitioner. I would advise the petitioner to make arrangements for the refund of the said dowry so that the sorry chapter of their doomed marital relationship can be brought to a close. However, I would not make an order compelling the petitioner to refund the said dowry since such a prayer is not contemplated under the **Matrimonial Causes Act**. The petitioner should use her good judgment and do the right thing.

There shall be no orders as to costs. Each party shall bear his or her costs.

DATED at Kericho this 8th day of November 2007

L. KIMARU

JUDGE