

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA

Divorce Cause 7 of 2005

JEP.....PETITIONER

VERSUS

NRMPRESPONDENT

JUDGMENT

On the 31st May 2001, the Petitioner **JEP** then a widower married the Respondent **NRMP** at the Registrar of Marriages Office at Mombasa. Thereafter they lived and cohabited at Ukunda but they have not had any issue. The Petitioner claims that after two years of marriage the Respondent was cruel to him and has filed this petition seeking divorce on those grounds.

On her part the Respondent claims that the Petitioner has not only been cruel to her but has also committed adultery. She has in her answer to Petition also cross petitioned for divorce on those grounds.

In his evidence the Petitioner stated that for the first one year their marriage was wonderful. But after that the Respondent started demanding money and that caused problems between them. She wanted money to start a salon but the Petitioner did not think that was a business he could finance.

On 3rd June 2003, the Petitioner further testified, the Respondent seriously beat him up and even attempted to strangle him. He reported the matter to police and was issued with a P3 form which he produced as Ex.1. On the 26th June 2005 she again assaulted him and he reported the matter to police and was issued with another P3 form Ex.2. On both occasions he did not want police to prefer any criminal charges against her. All he wanted was the Respondent to vacate the matrimonial home and leave him alone.

The Petitioner denied assaulting the Respondent as claimed in the cross-petition or at all and asserted that he has never assaulted any woman in his life. He also denied failing to provide for the Respondent and stated that since the 28th June 2003 when she moved out of the matrimonial home he has paid to the Respondent a sum of Sh. 6000/= every month for her upkeep.

In her testimony the Respondent stated that initially their marriage was a happy one but from January 2003 the Petitioner started to behave strangely. He did not want to go out with her. Later she learned that he had a love affair with another woman. On 3rd June 2003 the Petitioner received a call on his mobile phone. She said that totally out of character with him the Petitioner went out to talk to the caller. When she sought an explanation they quarreled and fought. She said they fought again on the 25th June 2005. According to her it is as a result of the struggle that the Petitioner fell and was injured. She also seeks a divorce and demands that the Petitioner having ruined her life he should find a job for her.

I have considered the evidence adduced by both parties in this cause. Having watched the demeanour of both parties, I have no doubt in my mind that the Petitioner was honest and told the truth. He is an old man aged about 70 years at the time of assault. I believe his evidence that he did not assault the Respondent and that it is the Respondent who assaulted him. If the Respondent had also been assaulted as she alleged she could also have sought obtained a P3 form from the police. She did not even as much as report the assault on her.

As regards the Respondent's allegation that the Petitioner has since their marriage committed adultery her testimony was hearsay. She did not call the lady who she alleged told her that she had seen the Petitioner with another woman. In the circumstances I find that the Respondent has failed to prove her cross-petition and I accordingly dismiss it.

On the other hand I find that the Petitioner has proved the ground of cruelty by producing P3 forms.

The parties having lived apart since the 28th June 2003 I find that their marriage has irretrievably broken down and there is no point of keeping it alive any longer. I therefore allow the Petition by **JEP** and order the marriage between him and the Respondent dissolved. Each party shall bear its own costs.

DATED and delivered this 27th day of January 2006.

D. K. MARAGA
JUDGE