

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI
Divorce Case 6 of 2003

P K A.....PETITIONER

VERSUS

M N K

D MRESPONDENTS

JUDGMENT

The Petitioner filed this petition against the two Respondents who, though served, did not care to defend themselves. Hearing of this case has therefore proceeded in the absence of both Respondents. In this judgment M N K may also be referred to as the First Respondent while D M may also be referred to as the Second Respondent.

The Petitioner and the First Respondent started cohabiting as husband and wife under Kikuyu customary Law in 1994 before they converted that marriage into a marriage under the Marriage Act Chapter 150 Laws of Kenya – on 5th February, 1999 at the office of the Registrar of Marriages, Nairobi, Sheria House. They had their Matrimonial home at Nanyuki town and now the Petitioner says the first Respondent abandoned that matrimonial home in February, 2002 after they had been blessed with three children, namely, V W born in 1994, G W born in 2000 and L W born in 2000.

The petition is based on two grounds; first, the ground of adultery and second, is the ground of cruelty. Concerning adultery, the First Respondent is alleged to have had sexual intercourse with the Second Respondent and evidence was adduce during the hearing that they now live as husband and wife. The First Respondent is also said to have had sexual intercourse with men unknown to the petitioner.

Concerning the ground of cruelty, the petitioner gives several incidents which made him feel the First Respondent was cruel. They include changed dressing styles whereby the First Respondent started preferring extremely short skirts commonly known as mini skirts; staying out late without any reasonable explanation or permission; being in possession of condoms, some of which used, when condoms were not in use between the petitioner and the First Respondent; accumulation of hefty monthly telephone bills up to Kshs.60,000/= in respect of matrimonial home line; regularly receiving late night calls from unknown persons; keeping and dragging along bad company into the matrimonial home which company included bar attendants; once abandoning children of the marriage without the petitioner's knowledge or permission and disappearing the whole night leaving the children unattended; denying children motherly parental care and exposing the children of the marriage to bad morals which could result into mental anguish and inculcate bad morals into the tender-aged children.

In the circumstances, the petitioner has had sometimes to seek the intervention of the District Children's office, Laikipia, stationed at Nanyuki without success and has had to relocate himself from Nanyuki to Nairobi resulting into changing his employer and taking children to boarding schools.

As the evidence on all the above factors was unchallenged and I have no good reason to disagree with what has been said, I am satisfied, on the balance of probabilities, that the petitioner has proved his case against each Respondent.

Accordingly, judgment is hereby entered for the petitioner:

(1) against the First Respondent in terms of prayer (a) in the petition;

(2) against the First Respondent and against the Second Respondent in terms of Prayer (b) and prayer (d)

In the petition.

In respect of prayers (a), (b) and (d), a decree nisi to issue and the same not to be made absolute until after the expiration of six months from the date of this judgement.

I say nothing about prayer (c) and prayer (e) in the petition.

Dated, delivered and signed at Nyeri this 30th day of March, 2006.

J. M. KHAMONI

JUDGE