

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

Divorce Case 9 of 2002

J BPETITIONER

VERSUS

J BRESPONDENT

JUDGMENT

The petitioner, John Bett filed a petition seeking to have the marriage which was celebrated between himself and the respondent, Josephine Bett on the 20th of November 1998 at the District Commissioner's Officer, Bomet dissolved. The petitioner averred that the said marriage had irretrievably broken down due to the fact that the respondent had treated him with cruelty. The particulars of cruelty were pleaded in the petition for divorce. The respondent denied that she had been cruel to the petitioner. She instead pleaded in her answer to the petition that it was the petitioner who had treated her with cruelty. She narrated instances when she alleges the petitioner treated her with cruelty in the particulars stated in her answer to the petition. Directions were duly taken and the hearing of the petition commenced before Muga Apondi J. The Learned judge heard the evidence of the petitioner. He also partly heard the evidence of the respondent. On the 6th of February 2006 the petitioner and the respondent agreed by consent to have the hearing of the petition taken over and determined by this court.

The petitioner called one witness, himself. He testified that after he married the respondent they lived together as husband and wife at Kataret village Bomet. Their marriage was blessed with two children, F C 8 years and K K 6 years. The petitioner complained that their marriage had not been a happy one. He testified that he had not enjoyed peace due to the fact that the respondent had been abusive and subjected him to mental anguish by demanding to be maintained in a lifestyle which the petitioner could not afford. He testified that the respondent had denied him his conjugal rights and had made their marriage intolerable by being silent, rude, stubborn and antisocial. He testified that the communication between them had broken down to the extent that the two of them communicated through their eldest child.

He further testified that the respondent had embarrassed him at his place of employment when in 1998 she went to the school where the petitioner was teaching and assaulted a student called J C . She accused the student of having an affair with the petitioner. He further testified that when the respondent was a student at [particulars withheld], Baringo, she had adulterous relationships with other men. When she went back home, she infected the petitioner with a venereal disease. He testified that because of the above reasons they separated before the petitioner filed this petition for divorce. It was his view that the marriage had irretrievably broken down as there was no chance that they would be reconciled due to their incompatibility. He testified that the children of the marriage should remain in the custody of the respondent.

The respondent in her testimony denied that she had treated the petitioner with cruelty. She testified that the problem with the petitioner started in 1998 when the petitioner started having affairs with his students. He testified that for a period of two years the petitioner had affairs with a girl called E C h, another girl called J and another one called E C . She testified that she knew of these affairs because she found romantic letters in the pockets of the petitioner's clothes when she was washing them. She also testified that the petitioner always kept condoms among his possessions yet they did not use condoms when they had sexual intercourse. It was her evidence that the petitioner used the condoms with other women.

She testified that it was the petitioner who had infected her with sexually transmitted diseases on three occasions. It was her testimony that when the petitioner learnt that he had infected her with a venereal disease, he sent her to be treated by Dr. Sawe and Dr. Sigilai on two different occasions. She further testified that it was the petitioner who was cruel to her by assaulting her and abusing her. She stated that she had not been too demanding in terms of material needs as claimed by the petitioner. She was emphatic that she had not denied the petitioner his conjugal rights. She admitted that she had confronted E C when she was certain at the time was having an affair with the petitioner. She had confronted her because she wanted the affair to stop. It was her evidence that the reason why their marriage failed was because the petitioner was too promiscuous. She testified that if this court were minded to grant the divorce, she should be granted the custody of the children and the petitioner be ordered to maintain the children until the age of majority.

I have considered the evidence adduced by the petitioner and the respondent in this divorce cause. I have also read the pleadings which were filed by the parties to this petition for divorce. The issue for determination by this court is whether the petition for divorce should be granted. The petitioner has testified how the marriage between himself and the respondent had broken down to the extent that it could not be salvaged. He testified that the respondent had treated him with cruelty by abusing him and denying him his conjugal rights. He further testified how the communication between himself and the respondent broke down to the extent that they had to communicate through third parties. He further accused the respondent for being unfaithful to him which unfaithfulness resulted in the respondent infecting him with a sexually transmitted disease.

On her part the respondent similarly complains that the petitioner had become promiscuous to the extent that he had also infected her with sexually transmitted diseases on three occasions. She further complained that the petitioner had treated her with cruelty by assaulting her and abusing her. She testified that the petitioner had affairs with many women to the extent that she feared that she would have been infected with the AIDS virus. She agreed with the petitioner that their marriage had no chance of being salvaged because the petitioner had already started a new family.

I have carefully evaluated the evidence adduced in this case. It is clear that the petitioner and the respondent can no longer be reconciled. Their differences go too deep. They do not trust each other and whatever action the other takes, it is treated with suspicion. The petitioner believes that the respondent was engaged in adulterous affairs. Similarly the respondent is convinced that the petitioner is promiscuous and cannot be trusted. Evidence was adduced how the communication between the two broke down to the extent that they had to communicate to each other through their eldest child. Once the lines of communication are cut, then there is no chance that the two would be in a position to sit down and resolve their differences. I observed the petitioner and the respondent in court during the proceedings in this divorce cause. The petitioner and the respondent were so hostile to each other that if they are forced to live together there is a likelihood that they would harm each other.

In the circumstances therefore, I will grant the petition for divorce. I declare the marriage solemnized on the 20th of November 1998 at the District Commissioner's Office, Bomet District between the petitioner and the respondent be and is hereby dissolved. Decree nisi is hereby issued granting the said petition for divorce which shall be made absolute after the expiry of three months. I will grant the custody of the children of the marriage to the respondent. The petitioner shall pay monthly maintenance of Kshs 4,000/= to the respondent for the upkeep of the said children. The petitioner shall also pay the school fees of the said children. The amount paid as maintenance shall be reviewed as and when the need would arise. The petitioner shall pay the costs of this petition for divorce to the respondent.

DATED at KERICHO this 28th day of March 2006.

L. KIMARU

JUDGE