



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KERICHO**

**Divorce Case 6 of 1997**

**ROSE CHESANG BARCHOK.....PETITIONER**

**VERSUS**

**WILLIAM CHERUIYOT KIRUI.....RESPONDENT**

**JUDGMENT**

The petitioner, Rose Chesang Barchock filed a petition seeking to be divorced from the respondent, William Cheruiyot Kirui. She pleaded that she was married to the respondent on the 25<sup>th</sup> of May 1990 at the Registrar's Office, Nairobi and since the solemnization of the said marriage the two of them had not consummated the said marriage apart from the four months that they had lived together. The petitioner pleaded that since then, the two of them had lived apart. She pleaded that the said marriage was not blessed with any issues. The petitioner averred that the respondent had married one Loy Kirui and were blessed with three children. The petitioner averred that their marriage had irretrievably broken down to the extent that there was no possibility of the said marriage being salvaged.

When the respondent was served with the petition, he filed an answer to the petition and cross petition. In the said pleading, he denied that he had ever cohabited with the petitioner since the solemnization of the said marriage. He averred that the petitioner denied him his conjugal rights. He further averred that the petitioner had cohabited with one Eliud Rono with whom they now had several children. He pleaded that the said marriage had irretrievably broken down and should be dissolved. Directions were duly taken and the divorce cause was listed for hearing. The petitioner was served with the hearing notice but she failed to attend court during the hearing of the divorce cause. This court ordered the respondent to proceed with his case, the absence of the petitioner notwithstanding.

The respondent testified that he was a lecturer at Moi University, Kakamega. It was his testimony that he got married to the petitioner on the 25<sup>th</sup> of May 1990 after which the petitioner went back to college. He testified that the two of them never at any time lived together as husband and wife. After the petitioner completed college, she went and lived with another man. He testified that he never had an opportunity of consummating the said marriage with the petitioner. They were therefore not blessed with any children. He testified that his efforts to be reconciled with the petitioner had been in vain. He later learnt that the petitioner was living with someone else with whom they had been blessed with three children. He testified that the marital relationship between himself and the petitioner died long time ago. In his view, it was not possible for the said marriage to be salvaged. He prayed this court to order the said marriage dissolved. He was not asking for costs.

I have considered the pleading filed in this cause. I have also considered the evidence which was adduced by the respondent. The issue for determination by this court is whether the petition for divorce should be granted. From the evidence adduced by the respondent it is clear that the petitioner and the respondent did not live together as husband and wife after the solemnization of the said marriage. The petitioner in her petition for divorce confirms the evidence of the respondent which is to the effect that the two of them never had an opportunity to consummate the marriage. After the petitioner completed college, the two of them drifted apart. According to the respondent his efforts to be reconciled with the petitioner proved to be futile. In her petition for divorce, the petitioner acknowledges that the said marriage did not take off as the petitioner and the respondent did not have an opportunity of making the said marriage work. The

respondent testified that the petitioner was now living with another man with whom they have been blessed with three children. On her part the petitioner averred that the respondent was living with another woman with whom they had three children.

From the pleadings filed and the evidence of the respondent adduced in court, it is clear that the marriage between the petitioner and the respondent was doomed from the word go. After they were married at the Registrar's Office in Nairobi in 1990, the two drifted apart. They did not consummate their marriage other than the four months after the solemnization of the said marriage. The respondent testified that the petitioner is now living with another man with whom they have three children. Both the petitioner and the respondent are in agreement that for the past sixteen years, they have lived apart and continued with their respective lives. Both of them are in agreement that the said marriage is irretrievably broken down with no possibility of it being rescued. The respondent testified that he had tried to be reconciled with the petitioner in vain. Both the petitioner and the respondent want this court to declare the said marriage dissolved. There were no issues of the said marriage.

In the circumstances of this case, I do declare that the said marriage is irretrievably broken down and cannot be salvaged. I therefore declare the marriage solemnized on the 25<sup>th</sup> of May 1990 at the Registrar's office, Nairobi between the petitioner and the respondent dissolved. Decree nisi is hereby issued dissolving the said marriage. The said decree nisi shall be made absolute after the expiry of three months. There shall be no orders as to costs.

**DATED at KERICHO this 28<sup>th</sup> day of March 2006.**

**L. KIMARU**

**JUDGE**