



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Divorce Case 179 of 2003

J K M PETITIONER

VERSUS

P M M.....RESPONDENT

JUDGMENT

By a divorce petition filed in court on 22nd December, 2003, the petitioner J K M sought an order to dissolve her marriage to P M M, on grounds of cruelty and adultery whose particulars she gave in paras 8 and 9 of the petition. She also prayed for custody of the children of the married who have lived with her from 1987 to date. She further prayed the court to condemn the respondent with the costs of this suit.

In court during the hearing of the petition, J explained that she got married to the respondent under Kikuyu customary law in 1976, when he moved to respondent's home and started cohabiting with him.

Later on 18.2.78, the two entered into a statutory marriage at the Register General's office in Nairobi. They were issued with a Marriage certificate which she produced as Ex.1 in court.

They had 3 children whose names, ages and dates of birth appear in para 5 of the plaint.

The 2 lived and cohabited as husband and wife in Wangige, Kiambu District.

The petitioner filed a suit for Judicial Separation in Nairobi Chief Magistrate's Court, being CMCC No.58 of 87, but the same was dismissed for want of prosecution. She has not filed any other suit, save for this one.

The petitioner complained that her husband used to beat her because she had given birth to 3 daughters. She was by then keeping poultry for sale – this was a business, but her husband frustrated her and sold off the business, and became very abusive even in front of her children. He would come late in the night, very drunk.

The petitioner recalled that on 3 different occasions, she was chased by her husband and she went back to her father's home. Her husband was called to go and discuss the matter but he declined to go.

The petitioner moved out of her husband's home in 1987, because of too much beating. She took her children with her. She has never resumed cohabitation with him since that date. She is asking for an order of dissolution of marriage so as to formalize their living separate since 1987.

The petitioner knows that the respondent has been living with a woman since 1990 and they have 2 children. They live in a neighbouring village from hers. She complained that her husband never paid school fees for her children all these years, but she managed to see her children through school, all the same.

The records show that the respondent was served with the petition, but he did not respond to it, thus causing the Registrar to certify this cause to proceed for hearing as an undefended cause.

I believe the petitioner's evidence as it was not controverted. Though she moved the court for divorce on the grounds of adultery and cruelty I did not consider it appropriate to pursue adultery because the petitioner had not joined the woman named as a party to the proceedings.

As for cruelty the petitioner gave details, circumstances, occasions etc etc when the respondent was cruel to her and also beat her physically. I believe that evidence from which I find that it was the respondent's cruelty, which caused the break down of the marriage between the petitioner and the respondent.

For this reason I proceed to grant an order dissolving the marriage between the respondent and the petitioner. As the 3 children are all aged above 18 years old, I will not make any order concerning their custody.

Finally, I order the respondent to pay the costs occasioned by these proceedings.

Dated at Nairobi this 24th day of March, 2006.

JOYCE ALUOCH

JUDGE