



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Divorce Case 83 of 2004

S S J PETITIONER

VERSUS

S KRESPONDENT

JUDGMENT

By can amended petition of divorce filed on 26th July, 2004, the petitioner S S J, sought an order from this court to dissolve her marriage to S K , on grounds of desertion whose particulars she gave in paragraph 5 of the petition. A copy of the marriage certificate was annexed to the original petition for divorce.

The petitioner got married to the respondent on 28th July, 2000, at the Registrar of Marriage's office, in the Attorney General's Chambers, Nairobi.

The petitioner is a Sudanese by nationality, whilst the respondent is a Dutch citizen of "*Sudanese extraction domiciled in Kenya*".

The petitioner works in Southern Sudan, working as a Human Rights lawyer, whilst her husband now lives in Holland since June, 2001.

By the time the couple got married, the respondent was working in Southern Sudan with an International NGO, but they established residence here in Kenya and lived in Hurlingham.

The petitioner complained that soon after the marriage the respondent became irresponsible and neglected to provide for her and their son.

That in June, 2001, he left Kenya and went to the Netherlands where he used to live before, and he refused to send any money to the family who still lived in Kenya.

The petitioner decided to take their son to see his father in the Netherlands. She bought the 2 air tickets. The respondent met them at the airport, but took them to a friends house not the house he was living in himself. He simply used to go and visit them, but never spent a night there and also never provided them with any food. The petitioner had to buy food and maintain herself and her son for the period she was in the Netherlands.

The petitioner returned to the Netherlands in 2002 and 2003 with her son, and she was treated the same way by the defendants. She never discovered where he was living because he did not invite her to the place, and instead became violent. The petitioner return to Nairobi, and in December 2004, she learnt that

her husband was in Nairobi and was staying with a friend. She took her son to see him, but he was not very receptive. It was then that the petitioner decided to seek an order for the court to dissolve her marriage to the respondent whom she described as having lost interest in her and her son. She does not condone or connive at his behaviour. She has tried to reconcile, but with no response from the respondent. The petitioner denied any collusion with her husband in filing this divorce cause, and prayed for custody of her son as she said her husband is not interested in the child.

This petition was certified to be heard as undefended after the respondent failed to file an answer after he had been served with the petition.

I believe the petitioner's evidence which in my opinion "proved" desertion on the part of the respondent who to date has refused to resume cohabitation with the petitioner, despite her going to the Netherlands where he now resides. The respondent has even abandoned the only child of the marriage.

In these circumstances, I proceed to grant the petitioner an order to dissolve the marriage to the respondent. I also award her the custody of the only child of the marriage, as the respondent has shown total lack of interest in him and also does not provide for his welfare. I order the respondent to pay the costs occasioned by these proceedings.

Finally, I direct that the decree nisi shall issue straight away today, and the same will be made absolute within a period of one month from today.

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

JOYCE ALUOCH

JUDGE