

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Divorce Cause 102 of 2004

D J A PETITIONER

VERSUS

F A ARESPONDENT

JUDGMENT

The petitioner, D J A , sought an order from the court to dissolve his marriage to F A A, solemnized on 3rd May, 1980, at the Registrar General’s office in Nairobi. He produced a copy of his marriage certificate.

Paragraph 2 of his petition lists the places they lived and cohabited as husband and wife. The 2 had 2 children.

The petitioner currently works with [particulars withheld] , based in Nairobi, whilst his wife is also employed by [particulars withheld], but based in New York. She is a computer programmer.

The petitioner first filed a Divorce Cause in a Chief Magistrate’s court, but this was withdrawn when the court ruled that it had no jurisdiction to hear the petition which is based on cruelty, adultery and desertion.

In court during the hearing, the petitioner lamented that his wife started seeing another man in 1992, and this “damaged” their relationship, as the petitioner became aware of multiple instance of adultery of his wife.

The petitioner said that because of the young children they had, he tried to reconcile with his wife and they lived peacefully upto 1996 when his wife once more met one CECIL TAYLOR in a college in New York and she started having an affair with him which she admitted in 1997. He testified further that this time, the matter got quite bad and the police were involved and even restraining orders were issued against CECIL TAYLOR, to stop him from coming to their matrimonial home in New York.

The petitioner decided to have a meeting with his wife and lover, CECIL TAYLOR at which the 2 agreed to end the affair and the petitioner resumed and continued cohabiting with his wife but soon afterwards, it became apparent that the affair had not stopped. This state of affairs caused the petitioner anxiety, depression and also affected his relationship with his wife and children. It also affected his performance at work.

The petitioner was by this time living in a small basement room within his house having moved out of the main bedroom. He became sickly as a result of all this.

He recalled that in 1998, his marriage had broken down irreconcilable, he was still in New York, and in December 1993 he moved out of New York to take up another appointment within the UN system, in another station.

The petitioner has not been back to his house in New York where his wife and children live for about 5½ years. He however pays the mortgage of the house for the benefit of the children, and also pays their school fees.

The petitioner is aware of the fact that his wife left Cecil and started living with another man, whom she

invited to the matrimonial house in New York.

He met his wife here in Kenya in 2004, by arrangements when she came for home leave. She was accompanied by that man whom she introduced to the petitioner casually.

The petitioner has suffered immense cruelty and emotional hardship and wants to end the marriage as he said there is no chance of reconciliation between them.

The respondent had been served with the petition, and she filed an answer and rejoinder. The Divorce Cause was certified as “defended”, but the respondent did not appear in court on the day of the hearing. She was said to be in New York attending a graduation of one of the children. I nevertheless decided to proceed with the hearing of the cause as the hearing date had been taken 3 months in advance, and there was no notice of the graduation given to the petitioner’s side. Besides, the parties had lived apart from each other since 1998, and I did not see the point in standing over the hearing to another date. Each party has moved on in their different ways.

From the evidence on record, I am satisfied that the respondent was treated the petitioner with cruelty which took the form of extra martial affairs and caused the petitioner mental anguish, depression, embarrassment etc etc. Though the respondent denied this, she did not appear in court to testify. I am satisfied that the petitioner has not condoned or connived at the respondent’s acts of cruelty. In the circumstances, I proceed to dissolve the marriage between the petitioner and the respondent. Further, I direct each party to bear their own costs, and further still, I direct that the decree nisi should issue straight away today, and the same be made absolute within a period of 30 days from today.

Dated at Nairobi this 17th day of March, 2006.

JOYCE ALUOCH

JUDGE