

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

Divorce Cause 2 of 2004

D M N PETITIONER

VERSUS

N W MRESPONDENT

JUDGMENT

By a petition for Divorce dated 19th January, 2004, the petitioner Daniel Mungai Ngugi sought an order from court to dissolve his marriage to his wife N W M, on grounds of cruelty and desertion, whose particulars he gave in paragraph 6 and 7 of the petition.

The respondent was served with the petition, but she did not respond to it. The Deputy Registrar then issued a certificate to the effect that the cause would be heard as an undefended cause.

The petitioner gave evidence to the effect that he started staying with the respondent as a wife in 1983, and in November of the same year, they had their 1st born, a male child, M N and in 1985 they had another baby boy, F N.

The couple continued living together and in 1991, they converted their marriage into a statutory monogamous marriage under the Marriage Act, Cap 150, Laws of Kenya. He produced the marriage certificate in court.

The 2 lived and cohabited as shown in para 4 of the petition.

The petitioner is a self-employed building contractor, whilst the respondent is a nurse. The 2 stopped living together in 1998.

The petitioner complained that he was mentally tormented by the respondent as they had many differences ranging from Nancy's accusations of infidelity, which he denied to outright cruelty. That N also accused him of not being a good example and father to the children and this caused strained relationship between him and the children, especially the 1st born child, who started showing signs of disrespect to him. The couple started living in separate bedrooms in 1998. At the petitioner's request, the couple sat and discussed their differences, but did not reach an amicable settlement. N then decided to leave the matrimonial house. The petitioner remained with the children and looked after them until they completed their school education. Now he has sent them to colleges to pursue further education – i.e. Kenya Polytechnic and Kenya College of Accounts. The petitioner had the children counseled several times after the respondent had left, in order to help them settle down. He has over the years encouraged them to visit their mother, the respondent, which they do.

The petitioner saw his wife Nancy about 3 years ago when she attended the burial of his mother at their home in Thika.

The petitioner also complained that N deserted him with no just cause, about 7 years ago. He therefore prayed that his marriage to N be dissolved.

I considered that the petitioner's evidence was uncontroverted as the respondent failed to file a reply to the petition, and also failed to appear in court for hearing.

In these circumstances, I find that the petitioner proved his case on a balance of probabilities, that the respondent treated him with cruelty and also deserted him with no just cause. I was also satisfied that the petitioner was not an accessory to the respondent's acts of cruelty, nor did he connive at or collude with the respondent in filing this divorce cause.

From the evidence on record, I am satisfied that the marriage between the petitioner and respondent has broken down due to the respondent's cruelty and desertion. I therefore grant an order dissolving the marriage between the 2, solemnized at the Registrar

General's office on 28th March 1991,

I direct that a decree nisi should issue today, and the same to be made absolute within a period of one month from today.

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

JOYCE ALUOCH

JUDGE