

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA

Divorce Cause 44 of 2005

N.M.G.CPETITIONER

VERSUS

A.M.A.....RESPONDENT

J U D G M E N T

On the 14th day of April 1998 the marriage between A.M.A and N.M.G.C was solemnized at the Registrar of Marriages, Mombasa under the Marriage Act. That is the marriage N.M.G.C now seeks to be nullified in her petition before this court.

In that petition, N.M.G.C has listed the particulars of cruelty and adultery committed by the Respondent A.M.A as the basis of her Petition.

When the petition came up for hearing, A.M.A, the Respondent, chose not to oppose the petition. The petitioner, testified without calling an independent witness in support of the petition. She produced a certified copy of the marriage certificate in evidence as proof of the existence of their marriage. The petitioner told this court that the respondent was cruel to her in that he always abused her of being foolish. The petitioner has also accused the respondent of assaulting her on various occasions. She claimed that she booked reports over the issue at Ukunda Police Station but she has received no assistance. The petitioner has also accused the Respondent of adultery. She claimed that the Respondent has even sired a child with another woman.

It is the submission of the petitioner that the marriage has irretrievably broken down hence it should be dissolved.

I have considered the evidence tendered by the petitioner in support of the petition. I have also taken into account the standard of proof required in such cases. To begin with, the petitioner's demeanor does not betray her. She appears straightforward and honest. I trust her testimony. The court of Appeal in the case of Wangari Mathai =vs= Mwangi Mathai [1980] K.L.R. 154 restated the position that the standard of proof is that of beyond reasonable doubt.

In my opinion I am not satisfied that the petitioner has proved in her evidence that the Respondent has been cruel to her or that he committed acts of adultery. What is clear is that the marriage has broken down beyond salvage. The petitioner has convinced me that the parties to the marriage are unable to amicably discuss issues let alone living together. This is a clear proof that the marriage only exists in paper. It is an illusory, which this can only do justice by dissolving it.

The end result is that the marriage between N.M.G.C and A.M.A entered on 14th September 1998 is dissolved. A decree nisi be issued and be made absolute within 3 months from the date hereof. Each

party to bear his or her own costs.

Dated and delivered at Mombasa this 26th day of May 2006.

J.K. SERGON

J U D G E

In open court in the presence of Mr. Wachira h/b Mr. Ambwere for the Respondent.

N/A for Murima for the Petitioner.

SERGON, J