



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

Divorce Cause 132 of 2002

P.M.NPETITIONER

VERSUS

J.N.MRESPONDENT

JUDGMENT

The petitioner **P.M.N** sought an order from this court to dissolve her marriage to **J.N.M** on the grounds of the latter's cruelty whose particulars she gave in paragraph 7 of her petition.

She also sought an order for injunction to restrain the defendant from occupying and or interfering with her peaceful occupation of the property known as [PARTICULARS WITHHELD].

At the time she filed the suit she also prayed that the rent coming from the suit premises mentioned above be shared between her and her husband.

The petitioner first gave evidence before Hon. Justice Martha Koome. She adopted that evidence when the cause proceeded before me for further hearing, after Justice Koome disqualified herself.

Her evidence was 1st recorded on 6th May, 2004, according to typed proceedings. On that day, she told court that she was married to the respondent on 17th April, 1971, and they were blessed with four children as shown in the petition.

The petitioner who is a teacher by profession started teaching even before she got married to the respondent.

She stated further that during the subsistence of their marriage, the 2 lived mostly in Murang'a and Nakuru where they were running a business of poultry, and also a grocery shop.

The petitioner lives alone in Kiambu since October 2003. All the children are grown up and are on their own.

The petitioner complained about the respondent's cruelty, both physical and verbal, right from the time they got married.

She recalled sometime in 1972 when the respondent beat her up just after she had delivered their 1st born child. She ran to her parents, and again in 1973, the respondent beat her and she called their best man who came to their house to discuss the problems between them.

The petitioner again recalled sometime in 1974 when the respondent beat her up when she was pregnant, she gave birth to a still born baby due to the beating. This time again she ran to her parents. The matter was discussed with the elders and in the presences of the respondent who had been invited to attend the discussion. The petitioner returned to her husband after the meeting.

The petitioner gave other incidents of beating in her evidence. She prayed the court to grant her maintenance. She lives in rented premises in Kiambu, paying Kshs.3,000/= p.m. She produced the receipts in court as exhibits. She also asked for money for food, about Kshs.6,000/= p.m. and money for medicals, about Kshs.4,000/= p.m. She also needs fuel of Kshs.1,500/= p.m. and paraffin, Kshs.1,000/= p.m. and clothing allowance of Kshs.4,000/= p.m. She also claimed money to buy water per month, a sum of Kshs.1,500/= and telephone allowance of Kshs.1,500/= p.m. In total, she prayed for an allowance of Kshs.20,000/= p.m. since she earns only Kshs.12,000/= p.m. She produced her pay slip as an exhibit in court.

According to the petitioner the respondent has income of Kshs.20,000/= from rental houses in Nakuru. That apart from this, he is also on a monthly pension as a retired teacher.

The petitioner asked for dissolution of the marriage as she lamented that all the properties they acquired during their marriage are all registered in the respondent's name.

The petitioner was asked several questions to which she replied that she moved out of their matrimonial house in Nakuru because of the respondent's cruelty. That apart from the beatings, the respondent would force her to sit down and listen to his endless lectures about how terrible she is.

The petitioner testified at length about the properties they have and how they acquired them jointly.

Part of their properties in Nakuru are 23 residential rooms rented and fetching a sum of Kshs.750/= per room. She used to collect this rent before, but her husband stopped her and instead collects the rent himself. That he also collects rent from their 2 shops in Muranga.

Phylis said her husband is very cruel and beat her up throughout the period of the marriage as he dictated things in the marriage.

The petitioner confirmed that her husband was a headmaster when they got married. That he retired in 1995, and went to Muranga but used to come to Nakuru at least once a month.

The petitioner moved out of the Nakuru home in 2003 because of harassment by her husband. She lamented that they cannot reconcile because she had even reported him to the police in Nakuru and was issued with a P3 form.

The respondent J.N.M testified that their marriage has been a happy one since 1971 when they got married.

He denied ever having chased P.M.N from Nakuru as she alleged. In fact he alleged that P.M.N left because she has properties in her own name and wants to share his. He also gave P.M.N other reasons for leaving as her refusal to share her salary with him, as he is now retired. He gave a list of two properties which he said P.M.N owns in her name.

The respondent gave details of when he said P.M.N came home late one evening after being dropped by a vehicle which he did not see as he was inside the house.

The respondent said that he has been faithful to his wife throughout the marriage. He said that in Nakuru he has only 15 residential rooms left, and only 5 rented currently, each fetching a rent of Kshs.1,000/= per room. That in total he gets rent of Kshs.6,000/= only, per month from the 2 shops in Muranga and he shares this with a partner.

The respondent lives in the matrimonial house in Nakuru with his children. He does not live in Muranga anymore as his mother has died.

The respondent gets a monthly pension of about Kshs.4400/=. He got a retirement package of Kshs.330,000/= which he says he used towards the education of the children.

The matrimonial house in Nakuru is registered in the respondent's name. He said he is not willing to divorce his wife because of the oath they took in Church. That though she has been away from him since October, 2003, he is willing to welcome her back home any day she returns.

The petitioner and respondent have responsible grown up children who look after him and whom he has sent to his wife to persuade her to come back, but with no success, otherwise he does not know where she lives and has never gone to her home in Muranga to persuade her to come back to the matrimonial home in Nakuru.

The respondent denied the evidence about him beating his wife. He conceded, however, that there was a time his wife went back to her mother's house for about 4 months, but this was not due to beating but perhaps because she was not happy with his relatives at home.

He also recalled a time when his wife went to teach at a school in Kiambu after having ran away from home.

The respondent denied ever having accused his wife of infidelity and said that she is divorcing him because she wants his property yet she pockets part of the rent to wit Kshs.1,500/= p.m. plus her own salary. He opposed the divorce and also payment of any maintenance to his wife.

The advocates made written submissions which now form part of the court record.

The submissions made on behalf of the petitioner's husband was very brief as he said that he does not consider the marriage having broken down as he still wants his wife back to their matrimonial house in Nakuru. However, the petitioner was emphatic that she does not want to live with the respondent whom she described as a very cruel man who has beaten her up several times over the period of their marriage causing her to give birth to a still born child, and also return back to her parents several times. The respondent, however, gave different reasons why the petitioner went back to her parents during the marriage.

The petitioner's evidence which was not challenged substantially was that **"it is when he is under the influence of alcohol that he used to beat me using verbal abuses even in the presence of children."**

The respondent answered this "**charge**" by saying that he only drank during weekends.

Listening to both the petitioner and respondent give their evidence and watching their demeanor, I was satisfied that the petitioner's evidence was credible and I believed it. It was evidence which was too detailed to have been made up. I find that it is that evidence of cruelty as detailed by the petitioner which caused the break down of marriage.

The respondent did not impress me as a truthful person. His reason for opposing the divorce is merely to avoid paying his wife maintenance, not because he still loves her as a wife and wants to cohabit with her. I noted as was also pointed out by petitioner's counsel, that the respondent has never gone to look for her to come back or gone to see her parents in a bid to reconcile. He even has the audacity to send the petitioner's own child to persuade his mother to come back to her husband. I found this most demeaning to say the least! I do not think that a husband who is serious in getting his wife back uses their own child to negotiate between them.

The respondent's cruelty has caused this marriage to break down to such an extent that it cannot be saved. After all, the couple have lived separately since October 2003, a period of almost 3 years. There

was a lot of evidence by both parties about property ownership. That is not strictly speaking a matter for the divorce court. Of relevance here is the divorce itself and or the issue of maintenance and costs of the suit.

It was clear to me that the respondent does not want to pay any maintenance to his wife yet he is the one currently occupying the matrimonial house in Nakuru whilst his wife has had to live in rented premises. Even the rooms they built for rental in Nakuru are under the control of her husband who alleged that 15 are currently rented. He did not however produce any evidence to that effect. The petitioner used to collect rent for these 23 rental rooms in the past.

Though the respondent has retired from his teaching job, there is evidence on record to show that he has income from the various family properties, which he is now inviting the petitioner to go back to Nakuru and manage, yet this is not possible as the marriage has broken down as I have shown.

I am satisfied that the petitioner has proved her case on a balance of probabilities and I proceed to grant an order dissolving her marriage to the respondent.

Secondly, I order the respondent to pay her maintenance of Kshs.15,000/= p.m. beginning from end of May 2006, till further orders of the court. I also order the respondent to pay costs of this divorce cause.

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

Dated at Nairobi this 19th day of May, 2006.

JOYCE ALUOCH

JUDGE