



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Divorce Cause 54 of 2005

J W WPETITIONER

VERSUS

P M I.....RESPONDENT

JUDGMENT

This is a petition for dissolution of marriage filed by the petitioner J W K in person against the respondent P M I. The petition was dated 18th April 2005 and was filed in court on the same day.

In the petition, the petitioner avers that she was married to the respondent on 20th August 1999 and that the petitioner and the respondent cohabited at Nairobi after the marriage. That there was a child of the marriage V N M born on 17/3/2000. That since 6th March 2001 the respondent deserted the petitioner without cause. The petitioner therefore seeks for orders, firstly, that the marriage be dissolved; secondly, that care and control of the child of the marriage be left to the petitioner; and thirdly, that costs be provided for.

The respondent did not enter appearance or file any answer to the petition, though he is said to have been served. Therefore the Deputy Registrar on 16/12/2005 certified that the case should proceed as an undefended case.

At the hearing of the case on 30/3/2006, only the petitioner testified. The respondent was absent and was not represented.

The evidence of the petitioner was that she was married to the respondent on 20/8/1999. Thereafter, they lived together. On 17/3/2000 they got a baby girl V N. One day, the respondent sent her somewhere. When she came back home, she found that the respondent had gone with all the clothes. From that time, the respondent has not come back. The petitioner has been living with her child since then.

She then filed this petition and served the respondent, but he never responded or came back to her. The petitioner was now working. She wanted the marriage to be dissolved and to get custody and control of the child. She also asked for costs to be provided for. She was relying on the copy of the entry of marriage certificate that was annexed to the petition and filed in court as proof of the marriage.

I have considered this matter. I have considered the evidence of the petitioner and the documents filed in court.

From the evidence of the petitioner, which is uncontroverted, and the certified copy of the entry of marriage issued by the Registrar on 7/8/1999, it is clear to me that the petitioner and the respondent were indeed marriage. Therefore it is my finding that as at the time the petition was filed in court, there was a valid marriage between the petitioner and the respondent that was capable of being dissolved.

The ground for dissolution of marriage is desertion. Again, the evidence of the petitioner is not controverted. She testified that one day, the respondent sent her somewhere and, when she came back, she found that the petitioner had disappeared with all the clothes. He has never come back to her and the child from that day. In the petition, the date for desertion is described as 6th March 2001. This is also not controverted.

In terms of section 8(1)(b) of the Matrimonial causes Act (Cap. 152), desertion has to last for a period of 3 years before a petition can be presented to court. The petition was filed on 18th April 2005. That was a period of more than 3 years from the date of the alleged desertion, that is 6th March 2003. The legal requirements for filing a petition for dissolution of marriage on grounds of desertion, were complied with.

It is my finding that the petitioner has proved desertion by the respondent. Her evidence was not controverted, and I have no reason to doubt her evidence. That is enough ground for dissolution of the marriage. On that ground, the marriage between the petitioner and the respondent has to be dissolved.

The petitioner has asked for custody, care and control of the child of the marriage. Her evidence, which is uncontroverted, is that the child was born on 17/3/2000. That she is the one who is taking care of the child. I find no reason to decline to grant the prayer. It will be in the best interests of the child. I will therefore grant the orders sought, with respect to the child.

The petition has also asked that costs of the proceedings be provided for. The proceedings were undefended. The respondent did not enter appearance or file an answer to the petition. He did not appear in court during the hearing. In those circumstances,, I find no justification in condemning the respondent to costs.

For the above reasons, the petition for dissolution of marriage succeeds, and I grant the following Orders –

1. The marriage between the petitioner and the respondent is dissolved and an order for divorce nisi be and is hereby issued to be made absolute after the lapse of six (6) months.
2. The custody, care and control of the child of the marriage is granted to the petitioner.
3. I make no orders as to costs.

Dated and delivered at Nairobi this 11th May 2006.

George Dulu

Ag. JudgeIn the presenc3 of