

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA

Divorce Cause 32 of 2005

T M.....PETITIONER

VERSUS

AM M.....RESPONDENT

JUDGEMENT

The parties to this cause married on the 11th September 1997 at the Anglican Church of Kenya at Taveta. This petition should therefore have been filed at the Resident Magistrate's Court at Taveta. On the hearing date, however, because the Petitioner had travelled from Taveta, I decided to hear it rather than transfer it to that court.

On 11th September 1997 the Petitioner then a widower married the Respondent at a ceremony conducted at the Anglican Church of Kenya at Taveta. At that time the Petitioner had children and the Respondent had also had three children.

The Petitioner states in his petition that the Respondent has treated him with cruelty, she has deserted him and that she has committed adultery. In his testimony the Petitioner stated that the Respondent has since their marriage been cold to him and his children with his deceased wife. In respect of desertion he said that since 8th September 2003 the Respondent has lived on her own. On adultery he said that on 15th February 2004 he went to the shop he had set up for her. He did not find her there and on enquiry he was told by the children that someone had gone with her to show her a piece of land. He did not know anything about that. He waited for her from 1.00 p.m. to 4.00 p.m. when she returned with a man. When that man saw the Petitioner ran away leaving his bicycle behind. His children told him that the man's name was Dominic.

As the Respondent though served chose not to contest this petition the Petitioner's evidence stands uncontroverted. The man had been with the Respondent in the bush for about three hours. His running away leaves one to imply that theirs had not been an innocent association. I am satisfied that the man's act of running away upon seeing the Petitioner is evidence that he had committed adultery with the Respondent.

The parties have lived apart since September 2003. Attempts by their church pastor to reconcile them have been futile. The Respondent has committed adultery with one Dominic and the Petitioner says with other men as well. I am satisfied that the marriage between them has irretrievably broken down. I therefore grant this Petition and order the marriage between the Petitioner and the Respondent dissolved. A decree nisi shall issue immediately to be made absolute after the statutory period of six months. The Respondent having not contested the petition I make no order as to costs.

DATED and delivered this 9th day of May 2006.

D. K. MARAGA

JUDGE