

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT MOMBASA

Divorce Cause 48 of 2005

H A. F W.....PETITIONER

VERSUS

M W. O.....RESPONDENT

JUDGEMENT

On the 15th October 2001 H A F W the Petitioner in this cause then a widower married M W. O the Respondent at the Registrar of Marriage's Office at Mombasa. After the solemnization of their marriage they lived and cohabited at Mtwapa in Mombasa. They have no issue though the Respondent has a child, E, from another relationship. The Petitioner says he did not adopt that child. Before marrying the parties had on the 4th October 2001 executed a pre-nuptial agreement Ex. 1 in which they spelt out their individual rights to their respective separate properties and their financial obligations to each other during the marriage.

The Petitioner claims in his petition that after their marriage the Respondent has treated him with extreme cruelty, hostility and has subjected him to extreme mental anxiety and hardship. The particulars of cruelty include allegations that the Respondent is a heavy habitual drunkard who spends most of her time in night clubs and goes home in the wee hours of the night, that the Respondent is callous and hostile to him, that the Respondent demeans him by using abusive language against him on the basis of his gender and race and that the Respondent has repeatedly threatened the Petitioner with death.

The Respondent though served did not file a reply or appear during the hearing to contest the petition.

In his testimony the Petitioner stated that the Respondent has since their marriage repeatedly threatened him with death boasting that she could even hire thugs to kill him. On the 10th July 2002 she told the Petitioner's mother that the next time she came to Kenya she would go back to her country with the Petitioner's dead body.

The Petitioner reported most of the threats to police and in one incident she was charged in Kilifi RMCr. Case No. 312 of 2003 with creating a disturbance. She was convicted and fined.

Though not a ground in his petition the Petitioner said that on the 22nd August 2002, 10 months after the marriage, the Respondent deserted the matrimonial home and has never returned. In the circumstances the Petitioner states that their marriage has irretrievably broken down and he does not see any chance of reconciliation. He therefore prays for divorce.

I have considered this evidence. As the Respondent did not contest the petition the Petitioner's evidence stands uncontroverted. I am satisfied that the Respondent has treated the Petitioner with cruelty. Having lived apart since 22nd August 2002 I find that the marriage between the Petitioner and the respondent has irretrievably broken down and no useful purpose will be served by keeping it alive any longer. In the circumstances I allow this petition and order the dissolution of the marriage between the Petitioner and the Respondent. A decree *nisi* shall issue forthwith to be made absolute after the statutory period of six months. Each party shall bear its own costs.

DATED and delivered this 8th day of May 2006.

D. K. MARAGA

JUDGE