



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

Divorce Cause 15 of 2001

R.M.K PETITIONER

VERSUS

C.L.K..... RESPONDENT

JUDGMENT

This an undefended petition whereby the Petitioner seeks orders for a divorce and custody of a minor. The Learned Deputy Registrar, after observing that proper service was effected upon the Respondent who entered appearance but failed to file his defence, certified the cause as an undefended one.

The parties to this case married in 1985 at Consolata Church in Nairobi under the Marriage Act, (Cap.150 Laws of Kenya). They subsequently lived together at various premises in Nairobi, Mumias and St. Louis Missouri in the U.S.A. This marriage was blessed with an issue namely C.L.M.K Jr. on 6th February, 1998.

The Petitioner testified that she seeks a divorce on the grounds of cruelty and adultery on the part of the Respondent. In proof of her averments, she testified that in 1997 the Respondent committed adultery with one C.N when she was a minor aged 17 years. The Respondent had brought C.N to their matrimonial home under pretext that the Respondent's mother had given them the child since she was an orphan.

The Petitioner treated C.N as a daughter and continued feeding both the Respondent and C.N only to learn later on that she (C.N) had been brought in as a co-wife. This caused the Petitioner mental anguish and embarrassment. The Respondent and C.N left the matrimonial home leaving the Petitioner and the child of marriage.

The Petitioner further testified that in 1988 the Respondent had another affair with one D.M which later on caused him his job as he was sacked.

The Petitioner also testified that from 1997 to 2000 the Respondent committed adultery with one Mrs. K a nurse at [PARTICULARS WITHHELD] while living in Mumias. The Petitioner on coming back from the United States of America learnt of the affair in that Mrs. K had been living in their matrimonial home and had left with the Petitioner's goods with sentimental value. This fact caused grave mental anguish to the Petitioner.

The Respondent deserted the Petitioner since September, 2001 and settled in the United States of America. The Respondent left an overdraft which the Petitioner was obliged to clear. This act of the Respondent caused deep embarrassment to the Petitioner.

The child of the marriage has been in the Petitioner's custody and care all along. The Petitioner thus prays for custody, care and control of the child.

I do not have any doubt that the marriage is irretrievably broken down as a result of the aforesaid acts of cruelty and adultery on the part of the Respondent. The Petitioner's testimony has satisfactorily proved those acts which are neither connived at nor condoned by the Petitioner.

Having looked at the pleadings and the testimony of the Petitioner I find that the Respondent has during the marriage meted several acts of Adultery apart from specific act of cruelty by neglecting the family after deserting.

I therefore order that the marriage solemnized between the parties herein be dissolved.

I further order that custody, care and control of the minor namely C.L.M.K Jr be granted to the Petitioner.

I also direct that the decree nisi be made absolute within 3 months hereof.

I do not make any order on costs.

Dated and signed at Nairobi this 30th June, 2006.

K.H. RAWAL

JUDGE

30.6.06