



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Divorce Cause 1 of 1979

V. W. J..... PETITIONER

VERSUS

F. F. J RESPONDENT

JUDGMENT

This divorce cause is a very old petition having been filed in the year 1979.

The petition commenced before late Hon. Kamau on 18th March, 2004 and was listed for submissions on 23rd August, 2005. Eventually after great efforts on my part, the same were heard by me on 11th May, 2006.

I must confess that I had to go through long records with difficulties, before I ventured to give this judgment. I do believe and hope that I have considered all relevant aspects of this matter.

Only issues before the court are the dissolution of the marriage on the ground of desertion and review of maintenance of Shs.4,500 per month granted in favour of the Respondent/wife on 15th March, 1979.

There are other relevant facts which need to be stated at this juncture, namely:

- 1. After separation of the couple the Petitioner/husband has been involved in several extra marital affairs and those affairs bore children.**
- 2. The parties executed a Settlement Agreement by consent on 3rd April, 2003. The said Agreement stipulates that the Respondent/wife shall be entitled to the land parcel described as [PARTICULARS WITHHELD]**
- 3. There is no evidence that the said agreement was rescinded or varied.**
- 4. The Petitioner/husband is paying Shs.20,000 to the two female children namely L.J and K.J born out of extra marital relation with one P.N.N. However no court order as alleged has been produced before the court.**
- 5. The Petitioner/husband is an architect by profession and was 70 years of age in 2004, and is renewing his work permit.**
- 6. He is developing a plot to erect 10 self contained guest rooms which are meant to be rented.**

With these back drops, I shall first determine the issue of divorce.

It is amply on record that the parties married on 20th April, 1970 before a Justice of Peace in the County of King in the State of Washington, U.S.A. After marriage, apart from cohabiting at Seattle in U.S.A., they did so in Nairobi in an apartment in Nairobi. Their marriage bore two children born in 1970 and 1973 respectively. It is not controverted by any of the parties, that the parties have been living separately since the Petitioner/husband abandoned the family. In my view, the issue of desertion and the parties living separately for more than 27 years is not in dispute and thus I do find, that the issue of desertion having been proved the marriage in fact solemnized between the parties be dissolved.

I also further direct that the decree nisi be made absolute within 15 days from the date of this judgment.

Having dissolved the marriage, the only issue before the court is the maintenance and settlement of properties.

So far as the settlement of properties is concerned, I have the Agreement reached by consent between the parties and as rightly contended by the Respondent/wife, the same can only be set aside by consent or on the same grounds like fraud, mistake or misrepresentation which would annul a contract. I may add that the party who can seek the order to rescind the contract is the innocent party and not a guilty one.

I shall now turn to the issue of maintenance.

Although I do not have the age of the Respondent/wife, from the facts of the age of their children, I can state that both are at their advance ages in the life.

The husband has not even complied fully with the order of sum of maintenance of a meager sum of KShs.4,500 till to date. It is not disputed that he has been paying the same in a haphazard manner.

In his affidavit of means as well in his testimony he seems to be suggesting that he is overburdened with the expenses he has to meet to maintain his relations from extra marital affairs. He also has been badly treated by his last mistress P.N.N who with his son have driven him out of his Residence in [PARTICULARS WITHHELD]. He does not deny that he is still developing the plot which I have already referred to hereinbefore. He also admits he maintains all his illegitimate children as well as his mistresses (that is what I would call them at present without further evidence).

He also agrees that he goes for his medical needs to an up market hospital. He also has his practicing licence but according to him, his profession income from his profession has dwindled. The accounts which he has submitted are hand written and do not seem to have been audited and certified. I further note that the expenses shown are quite large.

In the premises, it shall be difficult for me to accept his contention that he now lives his life and meets all his expenses from his pension from Denmark which equals Shs.35,000 to Shs.40,000 per month.

Moreover, he has also admitted that he sold his foreign properties. Although he states that he has used these sale proceeds on the family, no evidence is coming forth to show that fact. He also maintains three vehicles however old he claims them to be. In short, I got the impression from the facts before me that he does not begrudge other responsibilities except those towards the Respondent/wife.

As against the above the Respondent/wife has stated that she did not work apart from teaching swimming in a school for a while. She has stated that all her children both from her previous marriage as well as from the present one are adult and have been periodically helping her for her maintenance and needs. I have nothing to show that she has her own income or savings of any kind. She has agreed that she also is assisted by one friend W who is married and her girl friends in Kenya.

It may be true that respondent/wife has been able to eke out her living with the help of others, but that fact does not absolve the Petitioner/husband to maintain her while he was indulging himself freely in extra

marital affairs. He still wants to maintain them, but not the Respondent.

Finally, I do state that I have considered the facts of both sides, their needs and commitments, whether legal or otherwise, I have then come to the conclusion that the Petitioner/husband cannot just shrug off his responsibility towards the Respondent/wife.

I am also aware that the court has to determine the issue of maintenance as per the current circumstances of the parties borne out from the record of the case. I say this, because at the time of submissions no effort to bring more evidence as to the project of Guest House was made by either party by way of application to do so.

In the premises, doing the best I could, I direct that the Petitioner pays Shs.40,000 per month to the Respondent with effect from 1st June, 2006. He shall also pay costs of this petition.

Lastly I do direct that the Respondent may be at liberty to apply after submitting further evidence.

Dated and signed at Nairobi this 8th day of June, 2006.

K.H. RAWAL

JUDGE

8.6.06