

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KERICHO

Divorce Cause 9 of 2003

E.K.K.....PETITIONER

VERSUS

J.C.K.....RESPONDENT

JUDGMENT

The petitioner E.K.K has petitioned this court to have the marriage celebrated between him and the respondent, J.C.K to be declared a nullity on the grounds that the said marriage was entered into after the respondent had fraudulently misled him into believing that the pregnancy which she was carrying at the time the said marriage was celebrated was his responsibility. The petitioner particularized the fraud that was allegedly committed by the respondent. He averred that the respondent had been impregnated by another man called J.T. He further averred that he was coerced to marry the respondent after the respondent had threatened to take her life. He therefore asked this court to annul the marriage which was celebrated between him and the respondent on the 27th of August 2000 at the District Registrars office, Bureti District.

The petitioner served the respondent to enter appearance. The respondent entered appearance and filed an answer to the petition denying the averments made by the petitioner. She averred that the marriage celebrated between herself and the petitioner was legal. She further averred that after the celebration of the said marriage, the petitioner treated her with cruelty and further deserted from their matrimonial home. She further averred that the petitioner, after deserting from their matrimonial home, went and lived with another woman. She urged this court to dismiss the petition for divorce. The respondent was served to attend court during the hearing of this divorce cause. She however failed to attend court. This court was satisfied that she had been properly served and ordered the hearing of the petition for divorce to proceed, the absence of the respondent notwithstanding.

The petitioner called one witness; himself. He testified that prior to marrying the respondent, the two of them were friends. He testified that on the 23rd of January 2000, he had intercourse with the respondent upon which he contracted a sexually transmitted disease. Thereafter, he was informed by the respondent that she had become pregnant. He testified that upon learning that the respondent was pregnant, he was pressurized by the respondent to marry her. It was his testimony that were it not for the fact that he was made to believe that the pregnancy was his, he would not have married the respondent. He testified that a few weeks before the respondent gave birth to the children (*the respondent was pregnant with twins*), he succumbed to the pressure and got married to the respondent on the 27th of July 2000.

Soon thereafter, he consulted a gynecologist who informed him that the estimated due date of the birth of the children would be the 23rd of September 2000. He was therefore shocked when the respondent gave birth to the twins on the 5th of September, 2000, a whole three weeks before the estimated due date. It was at this point that he did investigations and discovered that the respondent had actually conceived the said children with another man called J.T. He testified that it was at that point that he learned that he had been duped into marrying the respondent. He therefore urged this court to declare the said marriage a nullity because upon learning of the fraud which was perpetrated against him, he opted not to live with

the respondent as a husband and wife. He therefore urged this court to grant the petition for divorce with costs.

I have carefully considered the pleadings which were filed by the parties to these divorce proceedings. I have also evaluated the evidence that was adduced by the petitioner in support of his petition for divorce. The petitioner would like this court to believe that he was duped by the respondent into marrying her. He testified that he had sex with the respondent in January 2000 and when he was informed that the respondent was pregnant, he was made to believe that he was responsible for the said pregnancy. However, he later learned that he was not responsible for the said pregnancy. What persuaded him that he could not have been responsible for the said marriage was a fact that the respondent gave birth to the twins about three weeks prior to the estimated due date. He testified that he married the respondent because he believed that he had to own up to his parental responsibilities. He however later investigated and established that the respondent had become pregnant by one J.T. He therefore urged this court to declare the said marriage a nullity and grant him his petition for divorce.

From the above evidence adduced in court, it is clear that the petitioner had sex with the respondent at the approximate time that the respondent conceived and became pregnant. In my view, the petitioner put undue weight to the fact that the respondent had delivered the children a few days before the due date. This court is aware that the estimated date of birth of a child is not an exact science. No one can with certainty say that a child would be born on a particular day, nine months after it was conceived. A child may be born a few days before or a few days after the estimated due date. That is the reason why doctors would advise mothers who are pregnant of the estimated due date and not of a specific date of birth.

From the testimony of the petitioner, it is clear that he mistakenly believed that because the children (*twins*) were born about two weeks before the estimated date of birth, then of necessity, he could not be responsible. This belief having developed in the petitioner's mind made him to be hostile to the respondent to the extent that he ascribed the responsibility of the said pregnancy to one J.T. This court did not believe the testimony of the petitioner that he could not have been responsible for the pregnancy of the respondent. However, it was clear from the evidence adduced by the petitioner that it would be futile for this court to make an order that the petitioner remains married to the respondent in a situation where mutual trust between the petitioner and the respondent has been thrown out of window.

Even if the petitioner mistakenly believed that he could not have been responsible for the said pregnancy, the fact that he took action by disowning the respondent soon after the celebration of the said marriage, is a clear indicator to the fact that the petitioner and the respondent cannot live together as husband and wife. I will therefore grant the petition for divorce sought by the petitioner. For the avoidance of doubt, I refrain from making any decision as relates to the paternity of the twins who were born during the existence of the marriage between the petitioner and the respondent. That issue can be resolved in another forum, preferably, by the children's court.

The upshot of the above is that a *decree nisi* is hereby issued dissolving the marriage celebrated on the 28th of July 2000 between the petitioner and the respondent at the District Registrar's office at Litein, Bureti District. The said *decree nisi* shall be made absolute three months from the date of this judgment. There shall be no orders as to costs.

DATED at KERICHO this 27th day of July 2006.

L. KIMARU

JUDGE