

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Divorce Cause 145 of 2005

S.S PETITIONER

AND

A.Z RESPONDENT

JUDGMENT

The present cause was certified as an undefended cause by the Learned Deputy Registrar and I do concur with her decision.

The Petitioner testified before me and I keenly observed her demeanour and I have formed an opinion that she was a credible witness and thus her uncontroverted evidence is accepted by me to be the basis for this judgment.

The Petitioner got married to the Respondent Mr. A.Z on 31st of May, 2001 before the Registrar of Marriage in Nairobi. The Marriage certificate is in the Respondent's custody but a certified copy of an entry of their marriage was produced and duly accepted by me as a proof of the said marriage.

The Petitioner is currently a student in a University in Sweden while the Respondent is a businessman operating his business both in Kenya and the Republic of Burundi. The Petitioner herein is a National of the Republic of Burundi and had lived in Nairobi before filing of this petition and is currently still living in Kenya.

The marriage has no issues.

The Petitioner testified that she seeks the divorce on ground of acts of cruelty by the Respondent. In proof of her averments she testified that after her marriage the parties herein travelled to Greece to visit the Respondent's parents. On arrival the Respondent totally changed his behaviour. He became ill-tempered and nasty to the Petitioner. He also started beating the Petitioner, rejecting her and asking her to leave him. He simply refused to have any relationship with the Petitioner as a wife.

The climax of his cruelty was evident on 5th of August, 2001 when he went to the Petitioner's friend's (K) house where the Petitioner had gone visiting and started beating the Petitioner with his leather belt and later strangled her till she became unconscious.

This was too much for the taking for the Petitioner. In order to save the marriage the Petitioner attempted to reconcile but it did not bear any fruits as the Respondent did not respond. The Petitioner was forced to leave the Respondent without her belongings as the Respondent took away her jewellerys and her personal belongings. On 10th August, 2001, the Respondent's mother called upon the Petitioner to come home and to tend the Respondent who was sick. As a wife the Petitioner went to see the Respondent but on arrival at his place, the Respondent had nothing to do with the Petitioner thus she had no option but to leave. Since that day the Respondent has not bothered to communicate with the Petitioner. These acts of cruelty that were meted against the Petitioner by the Respondent, barely two months into the marriage, have affected the Petitioner mentally and have inflicted physical pain to the Petitioner causing her to flee her matrimonial home.

Those acts are acts of cruelty and found as such by this court. I do find, in the premises that the Petitioner has proved acts of cruelty by the Respondent and I further find that the Respondent is

accordingly guilty of the matrimonial offence of cruelty as per the law.

There is no doubt that the marriage herein is irretrievably broken down as a result of the aforesaid acts of cruelty on the part of the Respondent who has not bothered to communicate with the Petitioner since August, 2001. The Petitioner's candid testimony has satisfactorily proved those acts which are neither connived at nor condoned by the Petitioner.

The Petitioner testified that she has neither presented nor prosecuted this petition in collusion with the Respondent.

I therefore order that the marriage solemnized between the parties herein be dissolved and *decree nisi* herein be made absolute within 3 months from the date hereof.

I shall make no orders as to costs as the Petitioner did not wish to have the costs from the Respondent.

Dated and signed at Nairobi this 27th day of July, 2006.

K.H. RAWAL

JUDGE

27.7.06