



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Divorce Cause 154 of 2005**

R.J..... PETITIONER

VERSUS

S.W.K..... RESPONDENT

JUDGMENT

The Learned Deputy Registrar, after observing that proper service was effected upon the Respondent and who has failed to enter appearance, properly certified this cause as an undefended one.

The Petitioner is a pilot with [PARTICULARS WITHHELD] and the Respondent is a vet doctor. The parties herein married on 24th November, 2002 as evidenced in the marriage certificate produced by the Petitioner as Exhibit 1. This marriage was not blessed with any issues.

The Petitioner testified that he seeks a divorce on the grounds of cruelty and adultery on the part of the Respondent. In proof of his averments, he testified that subsequent to the marriage, the parties lived and cohabited in Nairobi at a rented apartments between the year 2002 until 6th October, 2005 when the Respondent moved out of the matrimonial house.

It is the Petitioner’s evidence that the Respondent after the solemnization of the marriage became aloof changed her attitude and started complaining that she was unhappy in the said marriage. The Respondent refused to attend any social functions with the Petitioner and after a year into the marriage the Respondent willfully refused to have any intimate relation with the Petitioner which led to the drift between the two. The Petitioner further testified that the Respondent was always on her mobile phone sending SMS during the night and disregarded the discomfort caused to the Petitioner while he was asleep. When questioned, the Respondent would tell the Petitioner to get off her back and that she could do whatever pleased her. Those facts eroded the very cone of their marriage. The Petitioner was traumatized by her behaviour and he as a pilot needed to be in proper physical, mental and psychological stability while on duty.

The Petitioner further testified that the Respondent was never there for him whenever he came back from duty from International flights. The Respondent had totally neglected her duties as a wife and even went to the extent of sleeping in the guest room while the Petitioner was waiting in the matrimonial bedroom.

These averments, deponed by the Petitioner and which are uncontroverted, are not the ones expected by any spouse to face in the marriage. These acts wherein the Petitioner was not accessory amounted to cruelty in law.

Towards the end of March, 2005 the Respondent started spending nights out and on being questioned,

she would retort that she was with her friends and that she could spend her nights wherever she wanted and if the Petitioner did not like it that was too bad for him.

The Petitioner was informed by his friend a First Officer K,D that whenever the Petitioner was away on duty, he had severally flown the Respondent to Mombasa or Masaai Mara for holidays in the company of a European man and they acted in an unbecoming manner while together in the flight, the way couples behave. When the Petitioner confronted her with these events, the Respondent told him if he did not trust her he could as well leave her.

One day by chance, the Petitioner found the Respondent's mobile on the bed side and saw very intimate SMS from one Mr. A.S addressed to the Respondent. Again on being confronted about the SMS the Respondent denied and became arrogant.

The Petitioner could not take any more his suspicions and one day followed the Respondent to the gym which she had told him she went and instead of going in the gym the Respondent jumped into Mr. A.S' vehicle a Pajero in make, and they drove off to a hotel in town. The Petitioner did not pursue further the matter as he did not want to face the eventuality by himself.

To add insult to injury, the Respondent on subsequent day came to the matrimonial home with Mr. A.S' vehicle claiming that a client had left it with her when he went out of the country. The Petitioner also gave further evidence as to her relation with Mr. A.S which I do not consider because in my view, they are in nature of hearsay evidence.

Two weeks before the Respondent walked away from the Petitioner's life, the Petitioner confronted her with her affairs with Mr. A.S and she was simply shocked and drove off without any response.

This enraged the Petitioner forcing him to call Mr. A.S' number which he had obtained from the SMS in the Respondent's phone. The Petitioner questioned Mr. A.S whether he knew that he was dating a married woman and Mr. A.S' answer was in the affirmative. Mr. A.S further told the Petitioner that according to the Respondent her marriage to him was nothing more than just signing of a paper. This evidence, which once again is uncontroverted, corroborates his earlier evidence of the Respondent and Mr. A.S going to a hotel from the gym.

It is also strengthened by the Petitioner's evidence that the last time he communicated, with the Respondent, he asked her to choose between him and the other man (Mr. A.S) and on coming back home from Amsterdam where he was on duty, he found that the Respondent had moved out and has not communicated to him since.

The acts of adultery are obviously not exhibited in open and mostly are proved from circumstantial evidence. The sum total of evidence before me has satisfied the requirement of proof in matrimonial cases, which is between the balance of probability and beyond reasonable doubt. In my opinion, looking at the evidence in whole, the Petitioner has proved also the acts of adultery by the Respondent.

It cannot be doubted that the marriage herein is irretrievably broken down as a result of the aforesaid acts of cruelty and adultery on the part of the Respondent. The Petitioner's candid testimony has satisfactorily proved those acts which are neither connived at nor condoned by the Petitioner.

The petition also, as per the Petitioner's evidence, is neither presented nor prosecuted 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 60 days from the date hereof.

I shall not make any order on costs.

Dated and signed at Nairobi this 20th day of July, 2006.

K.H. RAWAL

JUDGE

20.7.06