



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT ELDORET

Divorce Cause 15 of 2004

N.K.....PETITIONER

VERSUS

J.J.S.....RESPONDENT

JUDGEMENT

The Petitioner and the Respondent were married on the 19th December, 1992 Under the African Christian Marriage and Divorce Act, Chapter 151 of the Laws of Kenya. the marriage was blessed with two children, I.J born on July,1993 and L.K born on the 9th June, 1995.

The Petitioner, the husband, filed this petition on 28th October,2004 seeking the following orders:-

- i. The marriage between the Petitioner and the Respondent be dissolved.
- ii. The custody and care of the children be committed to the Petitioner.
- iii. The Respondent be condemned to pay costs of this petition.
- iv. Any other or further relief that this Honourable Court may deem fit to grant.

The Petitioner and the Respondent lived at Lessos from the date of marriage upto date. The Respondent was served with the Petition on 4th April, 2005 but chose not to defend this petition. She did not file any answer or/and cross – petition.

The Petitioner testified on oath. He said that their married life was full of problems. The Respondent used to use bad language and insulted the Petitioner. She abused his parents and called them “**Ghasia, takataka hii**”. She called the Petitioner stupid. The Petitioner said that she used to come home late at night, after 8 p.m. Many times she used to sleep in the sitting room.

The Petitioner testified that the Respondent moved out of the matrimonial in June, 2001 and leased her own house at the Trading Centre. Later she applied to the University where she is now doing a parallel program.

The Petitioner further testified that the Respondent used to take the children without informing him and without his consent. The children have been in the custody of the Petitioner. Whenever, she book the children, they would stay with her for two weeks or less and she would return them. In December 2003,

she took the children forcefully and after two weeks placed them in a Matatu and sent them back with a note telling him to take the children to school.

The Petitioner testified that he has been with the children for the last 5 years. They go to school in [PARTICULARS WITHHELD]. The Petitioner produced receipts to show that he pays the school fees. He has employed a person to look after the children.

I have carefully perused the petition the particulars of cruelty and considered the testimony of the Petitioner given on oath. The Respondent has not defended the petition. I thought that the Petitioner was a credible and truthful witness.

In the case of **MEME –VS- MEME (1976) KLR**, 13 at p.19 Justice Chesoni said that cruelty as a matrimonial offence upon which a petition for dissolution of a marriage may be grounded is defined as the willful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger.

The Petitioner has proved to the satisfaction of this court all the charges of cruelty and that of abandoning the children as a parent. I hold that the Respondent is guilty of cruelty as against the petition.

The Respondent has abandoned her children. She did not even put a claim for custody in these proceedings. She clearly does not show much care for them at this stage. For a mother, this is unusual, particularly for such young minors who need her love and care at this formative period.

As a result, I am compelled to conclude which I hereby do that the children's interest and welfare would best be protected in the circumstances, in their father's custody.

I do hereby order the dissolution of the marriage between the Petitioner and the Respondent. The Petitioner shall have the custody of the two children of the marriage. The Respondent is at liberty to apply to court for access and visitation, to the children. There shall be no order as to costs.

DATED AND DELIVERED AT ELDORET ON THIS 13TH DAY OF JULY,2006,

M.K. IBRAHIM

JUDGE.