

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Divorce Cause 128 of 2004

E.A.P.H PETITIONER

VERSUS

P.A.H RESPONDENT

JUDGMENT

At the trial, the Petitioner adduced her evidence in presence of both counsel i.e. her counsel and the counsel for the Respondent. Her testimony was not tested during cross-examination. The Respondent also did not wish to adduce any evidence.

In short the testimony of the Petitioner stood uncontroverted. After their marriage on 6th July, 1985 at Wankie in the Republic of Zimbabwe, the Petitioner joined the Respondent in Nairobi. They cohabited as husband and wife from 1987 to 2003. She had detailed several premises wherein they cohabited during their marriage. The couple has no issue of marriage.

The Petitioner testified that the Respondent is the Managing Director of a [particulars withheld]. She reiterated her allegations made in the petition as to acts of adultery committed by the Respondent. She named the lady with whom the Respondent lives an adulterous life as Mrs. C.G, who has been served with the petition, but has chosen not to appear or file any response.

She also added that it is within her own knowledge that the Respondent had been taking the said Mrs. C.G to his Lodge and was living with her and has committed acts of adultery with her.

On the basis of her aforesaid evidence she prayed that their marriage be dissolved.

It is trite law that the standard of proof in the matrimonial cases is higher than that of balance of probability. The matrimonial offences are of quasi judicial nature.

The allegations of adultery were averred under oath and that too in presence of the Respondent's counsel. Her testimony was not challenged and this court thus has to accept the same as uncontroverted evidence and accept the same as duly proved allegations before the court.

I therefore find that the Respondent is guilty of acts of adultery with the named person and the Petitioner is entitled to her prayer of dissolution of marriage which I hereby do grant.

The Petitioner has reserved her right of maintenance and/or settlement and I do give her the liberty to file appropriate application in that regard.

I shall also order that the costs of this petition be granted to the Petitioner.

The decree nisi be made absolute within 45 days from the date hereof.

Dated and signed at Nairobi this 21st day of September, 2006.

K.H. RAWAL

JUDGE

21.9.2006