



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI LAW COURTS

Divorce Cause 124 of 2005

A.S 1..... PETITIONER

VERSUS

A.S 2..... RESPONDENT

JUDGMENT

On 22.09.05 the petitioner filed petition praying for the following orders:-

1. That the marriage between the petitioner and respondent be dissolved.
2. That the custody and control be granted to the petitioner of the two minor children, namely:-
 - (i) A.S 3 – male, born on 10.01.97.
 - (ii) A.S 4, male, born on 21.02.99.
3. That the costs of this petition be granted to the petitioner.
4. Any other further or alternative relief this honourable court may deem fit to grant.

At the hearing of the petition on 07.07.06 the petitioner was represented by learned counsel, Mr V. Sharma. There was no appearance for the respondent.

The salient facts of the cause as reflected in the documentary and oral evidence on record may be summarized as under.

There is affidavit of service sworn by David Kuya, process server on 10.11.05 to the effect that he served Notice, Petition, Affidavit together with copy of Memorandum of Marriage dated 04.02.94 on the respondent at her place of residence at [PARTICULARS WITHHELD] Nairobi on 30.09.05. A statement dated 24.11.05 by Vishnu Sharma, Advocate for the petitioner shows that the respondent did not file any appearance or answer to the petition. The cause, therefore, proceeded as an undefended cause.

It is the petitioner's case that he and the respondent profess the Hindu religion and that they got married on 04.02.04 at Aray Samaj, Andheri, Bombay, India in accordance with the customary rites and ceremonies of Hindus. The petitioner is a Kenyan citizen and businessman in Nairobi. The respondent is an Indian national. After the marriage, the petitioner brought the respondent to Kenya and the two cohabited in Nairobi. There were two issues of the marriage as particularized at prayer 2 above.

The petitioner brought these proceedings against the respondent on grounds that the respondent was cruel to him, the children of the marriage and the entire petitioner's family. The particulars of cruelty given include complaints by the petitioner that the respondent did not care for, did not cater for or look properly after the children and that she forsook them; that the respondent was impulsive and behaved in an unusual and abnormal manner; that the respondent's moods changed often and continually; and that she was not or at all interested in conjugal relationship.

It was the petitioner's further evidence that on 29.10.05 the respondent left the matrimonial home to return to India and left the children,

who are still minors, behind and has stayed away ever since. She had a few days before departure announced that she would leave and she made good her threat.

On the basis of the foregoing the petitioner brought the present proceedings seeking the others already cited.

The petitioner abandoned prayer 3 for costs.

I have given due consideration to the petition and the grounds on which it is based. Since the respondent did not file any response to the petition despite service, the prayers sought and the grounds on which they are based remain uncontroverted and I accept them. The particulars of the respondent's conduct testified to by the petitioner do amount to legal cruelty. I do, therefore, find that the petitioner has proved his case of cruelty on the part of the respondent to the required standard. Accordingly, I hereby pronounce a decree of divorce and order that the marriage between the petitioner and respondent be and is hereby dissolved. *Decree nisi* shall issue forthwith, the same to be made absolute after expiry of the statutory period of 3 (three) months, upon application therefor. I grant the petitioner legal custody and control of the two children of the marriage, now aged around 9 (nine) and 7 (seven) years, respectively.

Orders accordingly.

Delivered at Nairobi this 21st day of October, 2006.

B.P. KUBO

JUDGE