

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

Divorce Cause 46 of 2005

M.K.....PETITIONER

VERSUS

T.M.MRESPONDENT

J U D G M E N T

On the 22nd day of December 2001, M.K, the Petitioner herein and T.M.M the Respondent herein, had their marriage solemnized under the Marriage Act at the African Inland church in Machakos District. The couple cohabited in Mombasa city between the year 2001 and 2003 when teething problems in the marriage emerged.

The petitioner now seeks for the marriage to be dissolved in a petition dated 7th July 2005. The petition was served but the same did not attract any answer as required under the Matrimonial Causes Act. The Petition proceeded for hearing ex parte after directions were taken and after the Registrar issued his certificate under rule 29 of the Matrimonial Causes Rules.

M.K testified alone without calling for the evidence of an independent witness. He produced a copy of the marriage certificate to prove that he got married to the Respondent on 22/12/2001 in a wedding held at A.I.C. Machakos. He told this court that serious disagreements started to emerge between him and the Respondent and the Respondent had to desert the Matrimonial home on various occasions. He told this court that their marriage was blessed with a daughter called S.D.M now aged 3¹/₂ years who is currently in the Respondent's custody.

The petitioner told this court that the Respondent has deserted the Matrimonial home for four (4) months from the month of February 2003 and when she came back he alleged the Respondent told him that she was fed up with him because she already had someone else who was able to take care of her. The petitioner also claimed that the Respondent denied him conjugal rights on the basis that he had raped their only child. He produced medical notes to show that the Respondent had made false allegations against him. The petitioner urged this court to dissolve the marriage because the same was irretrievably broken down.

I have considered the evidence tendered by the petitioner in support of the petition for divorce. The question which I must determine is whether or not there is sufficient evidence to establish the petition. There are two main grounds raised in support of the petition by the petitioner. First, is that the Respondent is guilty of cruelty. Two, that the Respondent is guilty of desertion. I am minded to restate that the standard of proof in Matrimonial offences is that of beyond reasonable doubt that is to say that the court must be satisfied to the standard higher than that of a balance of probabilities required in civil cases. In this case I am satisfied that the petitioner has shown that the Respondent has been cruel to him when she used abusive language, made false accusations and denied him his conjugal rights. It is not denied that the Respondent has deserted the Matrimonial home.

I allow the petition by making an order dissolving the marriage. A decree nisi shall be issued which shall be made final within the statutory period. Costs of the petition shall be paid by the Respondent.

Dated and delivered at Mombasa this 4th Day of October, 2006.

J.K. SERGON

J U D G E