



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Divorce Cause 32 of 1999

E.M PETITIONER

VERSUS

W.M RESPONDENT

JUDGMENT

I commenced hearing of this old cause on 4th July, 2002. Thereafter due to my transfer to a new division of the High Court, the same was not heard by any of the Judges then in the Family Division of the High Court, and once again it landed on my lap when I was returned to this Division.

The Petitioner (hereinafter referred to as the 'wife') filed an amended Petition dated 24th July, 1999 and the Respondent (hereinafter called 'the husband') filed his amended answer and cross-petition on 27th July, 2001. The party cited as co-Respondent did not file appearance.

Both parties have alleged acts of cruelty against each other and the wife also alleged act of adultery on the part of the husband.

The wife in short testified that their marriage solemnized on 22nd March, 1986 suffered some downfall as she experienced financial stress due to unemployment of the husband between 1991 – 1992. She had to support the family with two children from her job as an accountant and by selling clothes part-time. For her business she had to go to Tanzania in October 1998 – November 1998 and that was with her husband's consent, yet he burnt her business wares costing Shs.52,050/-. When she came back she asked him to resolve the issue with family members but he refused to talk to anyone else except her younger brother which she did not agree. She went to his mother but she could not intervene. Then the husband in February, 1998 cut off the telephone on which her business depended. She suffered financial stress due to his action. She reported to the police but they advised them to take legal recourse.

She also testified that the husband has failed to maintain the family. He did not contribute when she was hospitalized in 1989 to 1993 and even when their son was born in 1993. She stated that she used to pay the bills through Diners' card and Visa card.

Her averments that the husband had a child from the co-respondent has not been proved as per required standard and I cannot allow the same.

She stated that on 2nd May, 1997 she moved out from the matrimonial home due to constant screaming and yelling. But she came back on 14th June, 1997. Thereafter the husband moved out in July, 1999.

She thus seeks dissolution of the marriage and custody of two children of the marriage who have been with her since the husband moved out. I do note that the first child J.N.M born in April, 1986 has now attained majority. The second son A.M.M is born in May, 1993 and thus is a minor.

The husband, in his evidence although accepted the facts of the wife going to Tanzania and cutting of the telephone line, had his own version to tell.

On the issue of telephone he stated that there was a misunderstanding over its use. The wife locked the telephone and refused him to use it and he disconnected the same under humiliation and frustration. He denied he burnt her goods while she was in Tanzania and stated that she went without his consent and knowledge. He demanded an explanation on her return as according to him she accompanied her Doctor friend whose visits to their matrimonial home were always objected by him. She refused his suggestions to invite their relatives and the best friend in marriage to resolve their dispute.

He rued that the real cause of the break of their marriage was loss of his job as a Lecturer and that she was not happy with his financial situation and started being hostile to him. She would refuse their housemaid to wash his clothes and also to make tea for him in her absence. He said that he loved his cup of tea. She humiliated him in many ways and made unfounded allegations against him. He stated that according to him he has made several sacrifices to save the marriage but reconciliation was not an idea in her mind. She declined all efforts to reconcile proposed by him and made by his relatives. He also stated that he made contributions to the family in the best way possible from his meager salary earned as a tutor.

He had to leave the matrimonial home as it was impossible for him to stay in matrimonial home after she filed this cause, due to humiliation faced by him. According to him he also tried to save the marriage due to welfare of the children but she is determined to break the marriage and he cannot stop her.

From the evidence adduced from both sides, it is apparent that the marriage went down the hill after the husband lost his good job. He struggled to get a job as a tutor which was not yielding good salary. Again it was at Machakos which involved Transport. As against that, the wife was progressing well in her financial position and the disparity between them caused the frictions. The deposition of the husband has not been questioned while that of the wife was thoroughly scrutinized. I cannot help look with sympathy the humiliation faced by the husband while he was jobless and staying at home without the comfort and understanding from the wife.

The strife caused by this situation led to the total break in marriage which both parties agree is irreparable.

Although I do find that the wife was more responsible for the said break due to her incapacity to sympathize with the husband during his low period, both of them have contributed in the break due to their respective acts.

I thus order that the marriage in fact solemnized on 22nd March, 1986 between the parties herein be dissolved. I shall not make any order on costs.

The wife shall have care, custody and control of the second born child.

The decree nisi be made absolute within 45 days due to long separation.

Dated and signed at Nairobi 17th day of November, 2006.

K.H. RAWAL

JUDGE

17.11.06