

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Divorce Cause 78 of 2005

E.W.C..... PETITIONER

VERSUS

J.K..... RESPONDENT

JUDGMENT

The Petitioner testified in this Cause which was certified as an undefended Cause by the learned Deputy Registrar.

From her uncontroverted testimony it was revealed that the parties solemnized their marriage on 4th August, 1999. The Marriage Certificate was produced to prove the said fact. They have a daughter born on 8th October 1999.

The Respondent has been treating the Petitioner in the manner which is not expected to be meted out from a spouse to another spouse in Marriage. Since 2002 he has started using abusive language to the Petitioner. Since the celebration of the marriage he has totally failed and neglected to look after the welfare of the family. He has not cared or catered for the daughter of the marriage since birth. In 2002 the Respondent left the family and has not shown his face to the petitioner or their daughter. It was the Petitioner who has been maintaining the home since the marriage despite his presence till 2002.

Her evidence was uncontroverted and apart from that I have seen her demeanours during her testimony. Her face showed the grief which she has suffered during marriage and showed the credibility of her evidence. I accept her averments as true.

I also accept her testimony that she is domiciled in Kenya and is a Kenyan citizen. The Respondent also, as per the petitioner's testimony is similarly a resident and citizen of Kenya.

I accept that the Petitioner has not condoned or connived at the acts of cruelty and that she has been accessory to the desertion of the Respondent. She has also similarly proved to me that she has not colluded with the Respondent in presenting or prosecuting this petition.

I therefore find that the Respondent was cruel to the Petitioner in his total neglecting the family and in his desertion of the family since 2002.

I order thus that the marriage in fact solemnized between the parties be dissolved.

Decree nisi be made obsolete within 90 days from the date hereof.

The petitioner also asked for the custody of the child of the marriage.

Mr. Mwangela thereupon applied for amendment to the Petition by inserting the prayer of custody, care and control of the issue of marriage namely V.N. After considering the submissions and evidence on record I allowed the application of amendment. I reiterate my observations made earlier that the Petitioner testified that since the birth she has been caring for and catering for her welfare

I therefore further order that the custody, care and control of issue of the marriage namely V.N be granted to the Petitioner.

I shall however not make any order as to costs in view of the evidence that the Petitioner has not seen the Respondent since 2002 and that the Respondent has never contributed to the welfare of the family.

Dated and signed at Nairobi this 3rd day of November 2006

K.H. RAWAL

JUDGE

3.11.2006