

PKW.....PETITIONER

Versus

SKK.....RESPONDENT

JUDGMENT

The petitioner in this cause sought for an order of dissolution of the marriage that was solemnized on 9th October 1987 at the office of the Registrar of Marriages. Upon marriage, the parties who are both domiciled in the Republic of Kenya cohabited as husband and wife at Rituta Satellite in Nairobi. There are three (3) issues of the said marriage namely: 1) JN aged 17 years 2) CW aged 10 years 3) AW aged 9 years

This was a defended cause, the respondent having filed an answer and crosspetitioned for divorce. The respondent has the custody of the three children of the marriage. During the hearing both parties gave evidence in support of the petition and crosspetition respectively. They each gave a detailed account of the acts of cruelty, neglect, deep misunderstandings based on interferences by family, suspicion of one another and blamed each other for the separation and eventual breakdown of the marriage.

According to the petitioner, the respondent left the matrimonial home in December 2002 with the children of the marriage without any provocation. The respondent failed to give the petitioner moral or emotional support when his mother passed away in March 2002. A more serious allegation by the petitioner was the fact that the respondent did not inform him when their daughter fell ill and passed away. The respondent caused the child to be buried at her parents home which caused the petitioner and his family tremendous agony. The petitioner sought reconciliation which did not yield any results as he complains that the respondent is involved in a religious cult which has indoctrinated her to regard the petitioner and his family as evil. The petitioner has been paying school fees and maintenance for the children and sought for the custody of the children.

On the other hand, the respondent maintained that, she was forced to leave the matrimonial home due to physical and emotional cruelty by the petitioner. The respondent complained of having been traumatized and dehumanized by the cruel treatment meted upon her by the petitioner and his entire family who had moved to live with her at their matrimonial home. The petitioner gave out the respondents business of a hair saloon to his sister much to the respondent's chagrin who was jobless. The respondent denied that she belonged to a religious cult but to a Pentecostal Church where even the respondent was a member.

The respondent denied having failed to inform the petitioner about their daughter's sickness and blamed the petitioner who had unilaterally withdrawn the family insurance medical cover with Avenue Nursing Home. According to the respondent she called the petitioner when she took the sick child to hospital for treatment and realized the child could not be treated at Avenue Nursing Home. The petitioner said he was busy and could not attend to the sick child and that is when the respondent took the child to the Kenyatta National Hospital where she was hospitalized for some days before she passed away.

The respondent testified that she saw no need of informing the petitioner as he had shown no concern to the child while she was sick. I have given careful consideration to all the evidence that was adduced by both parties as well as the pleadings. Whichever way one looks at the evidence, both parties have sought for the dissolution. They each accuse each other of all sorts of cruelty and desertion. It is clear from the evidence that this was a troubled relationship whereby mutual trust was eroded by various interests that affected the parties and led to the breakdown of the marriage. In the circumstances of this case, it is not possible or perhaps not even necessary to apportion blame suffice it to state, that the respondent's evidence that she was forced by physical and physiological cruelty to leave the matrimonial home is quite credible.

The circumstances under which she left the matrimonial home with four children without a reliable

income are consistent with a cruel home environment. Accordingly the petitioner is in constructive desertion. I am satisfied that this petition and cross-petition are not presented through collusion but due to the fact that the marriage is irretrievably broken down and cannot be reconciled. Accordingly I hereby pronounce the decree of divorce and dissolve the marriage that was solemnized between the parties. The decree nisi shall issue for a period of (3) months. The respondent shall have the custody of the 3 children of the marriage but the petitioner shall have the visitation rights. The details to be worked out by the parties. The petitioner shall pay school fees and maintenance as ordered earlier on. Parties shall be at liberty to apply on the issues of the children.

Judgment read and signed on 21st January 2005.

MARTHA KOOME

JUDGE