



REPUBLIC OF KENYA

HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

Divorce Cause 107 of 2000

AKS PETITIONER

VERSUS

BSS..... RESPONDENT

JUDGMENT

The petitioner and respondent are wife and husband , respectively, having contracted a marriage under the auspices of E.A. Ramgarihia Board, Nairobi, Kenya on 02.09.84. On 20.06.2000 the petitioner filed petition for divorce from the respondent on the ground of cruelty.

The petitioner’s case may be summarized as follows: On 02.09.84 she, then a spinister bearing the name Amrit Kaur Bambrah, lawfully married the respondent, Bhupinder Sign Soar, then a bachelor, at Nairobi. The two cohabited at Land Reference No.209/390/12, Rose Avenue, off Ngong Road, Nairobi. There was one issue of the marriage, i.e. a son named Kanwarajit Singh. Soar who was aged 14 years at the time the divorce petition was filed on 20.06.2000. The petitioner is a practicing Advocate while the respondent is a Medical Doctor. It is the petitioner’s case against the respondent that the respondent has since the marriage indulged in consistent alcohol abuse, leading to his violence towards the petitioner and the son of the marriage. The petitioner adds that the respondent physically hit her on two occasions, the last one being on 18.06.2000 when the respondent slapped her on the face, back and body. The petitioner adds that on the same occasion the respondent also hit their son on the stomach and threatened to kill him. According to the petitioner, the violence of 18.06.2000 occurred at about 1.30 a.m. and she gave its details as under:

“That on 18th June, 2000 in the early morning, when my husband, my son and I returned from a party at about 1.30 a.m., my husband became violent and abusive and started beating my son and I with his fists as a result of which fearing for our son’s life and mine and further fearing that we would suffer great injuries, my son and I left the matrimonial home.” These details are contained in paragraph 2 of an affidavit sworn by the petitioner on 20.06.2000 and filed on the same date principally in support of her application to be granted access to the matrimonial home to collect her and her son’s personal documents and effects after the two of them had aforesaid whereafter which she said the respondent had denied her and their son access to the home.

When the petition came up for hearing before me on 25.11.04, there was no appearance for the respondent. The petitioner, led by her counsel, Mrs M.S. Samnakay gave evidence on oath in support pf her petition. She told the court with regard to the fracas of 18.06.2000 that the respondent had had too much alcohol to drink at a friend’s party. That the respondent picked an argument with the son of the marriage, then aged 14 years. The son tried to hide from the respondent but the respondent hit him. The petitioner tried to intervene and the respondent threatened to kill the petitioner and their son.

The petitioner complained that the respondent hit her and their son with fists and that the fracas lasted about 10 – 15 minutes. The son panicked and sounded the security alarm. In response to the alarm, security guards came whereupon the respondent threw the petitioner and the son out of the house and the two took refuge at the petitioner's father's residence in Nairobi. The petitioner also complained that the respondent never gave her any financial support and overspending on household necessities. The petitioner stated that she has not condoned the respondent's cruelty, which she said caused her health to suffer. She also stated that she has not prosecuted or presented her divorce petition in collusion with the respondent.

On 11.07.2000 the respondent, through Ali & Associates Advocates, filed replying affidavit sworn by him on 07.01.2000 and denied having been violent and abusive to the petitioner and their son as alleged by the petitioner or at all. He also denied having denied the petitioner and their son access to the matrimonial home and added that indeed the applicant had been to the house and collected what she required. Regarding the incident of 18.06.2000, the respondent averred that there was a misunderstanding between him and the son, which he said is normal in any household and cannot be a reason for divorce.

On 13.10.2000 Messrs Ali & Associates, Advocates for the respondent wrote to Messrs Archer and Wilcock, Advocate for the petitioner, in essence asking for further and better particulars of her allegations against the respondent. The letter was copied to the Deputy Registrar in the "Probate and Divorce Division", High Court, Nairobi. The registry's receiving stamp is not clear but the Deputy Registrar's copy appears to have been received on 12.01.01. There is nothing in the court file to show that the respondent's request for further and better particulars was responded to or complied with.

On 01.03.04 Messrs Mohamed and Samnakay Advocates filed notice of change of advocates stating that they had been appointed to replace Messrs Archer and Wilcock as Advocates for the petitioner. I can find nothing in the court file to show that the respondent pursued his request for further and better particulars with the petitioner's new Advocates, i.e. Mohamed and Samnakay Advocates. Subsequently, i.e. on 20.08.04, Messrs Mohamed and Samnakay Advocates issued a hearing notice on behalf of the petitioner, whom they described as defendant, to Messrs Ali and Associates, Advocates for the respondent stating that the case has been fixed for hearing on 25.11.04. There is an affidavit of service sworn on 30.09.04 by Steere Muli Mbuku, Process Server stating that on the same date he served the hearing notice for 25.11.04 on Messrs Ali & Associates, Advocates for the respondent.

However, the respondent did not appear in court nor was he represented by counsel on the hearing date as noted earlier and hearing of the case proceeded in the respondent's absence when the petitioner basically reiterated the averments contained in her petition and allied documents. She called no independent evidence in support of her case but relied on her own averments and sole evidence to seek divorce. She also decided to forgo her prayer for costs and, as I understand it, any other relief. The only substantive document filed by the respondent in answer to the petitioner's divorce petition is his replying affidavit of 07.07.2000, generally denying the petitioner's accusations against him. Subsequently, vide letter dated 13.10.2000 addressed by the respondent's Advocates to the previous petitioner's advocates, the respondent sought further and better particulars of the petitioner's accusations against him.

As noted earlier, there is nothing in the court record to show that the further and better particulars called for by the respondent were supplied, nor is there evidence in the file that the respondent pursued the issue of getting the said further and better particulars. Accordingly, the court has no option but to adjudicate over this case on the basis of the petitioner's averments and sole evidence against the respondent's denial thereof through his affidavit of 07.07.2000.

A lot of the petitioner's accusations against the respondent are generalized and were not supported by specifics or evidence thereon. One illustration is the petitioner's complaint that the cruelty she ascribed to the respondent caused her health to suffer. She gave no elaboration of how her health suffered. Attention of the petitioner is drawn to the danger in relying on generalized and unsubstantiated accusations of this nature in support of divorce proceedings as such casual approach could in appropriate cases lead to disastrous results: see this Court's Judgment in e Cause No.17 of 2004, Marian Wodskou Gunson - vs - Colin Richard Gunson (unreported).

There is, however, the incident of 18.06.2000 specified by the petitioner against the respondent which warrants serious consideration by the court. This is the incident where the respondent is said to have got inebriated at a friend's party attended by him, his wife the petitioner and their 14 year old son after which the respondent picked an argument or quarrel with the son and when the petitioner intervened, the respondent resorted to hitting both of them. The petitioner told the court that this was the second such incident where the respondent chose to answer this specific accusation in the following generalized manner:

“That: - There was a misunderstanding between my son and I which is normal in any household and indeed cannot be a reasons (sic) for divorce.” The petitioner did not specify the mis-understanding, neither did he say who was responsible for it. Subsequently he made a half-hearted attempt to seek further and between particulars of, inter alia, the two incidents of such nature ascribed to him by the petitioner but apparently the particulars sought were not supplied and he never followed the matter up.

Finally, the respondent never turned up in court at the hearing of this cause to challenge his wife's divorce petition. The court is entitled to infer and does infer from the respondent's aforesaid omissions that he has either lost interest in his marriage to the petitioner or he has no defence to the petitioner's accusations of cruelty against her. Correspondingly, the petitioner told this court at the hearing of this cause that all she was after was divorce and that she had decided to forego her prayer for costs. She did not press for any other relief. The upshot of all the foregoing is that there is no marriage worth talking about. Accordingly, I hereby pronounce a decree of divorce and order that the marriage between the petitioner and the respondent be and is hereby dissolved.

Decree nisi shall issue forthwith, the same to be made absolute after expiry of the normal statutory period of 3 (three) months. The parties shall bear their own respective costs. Orders accordingly.

Delivered at Nairobi this day of, 2005.

B.P. KUBO

JUDGE