



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Divorce Cause 131 of 2001

E O NPETITIONER

VERSUS

M NRESPONDENT

JUDGMENT

The petitioner E O N moved the court for an order to dissolve his marriage to his wife M N on grounds of desertion on several occasions.

The respondent denied the claim of desertion, and cross-petitioned for divorce on grounds of her husband's cruelty to her and the children of the marriage. She gave particulars of such cruelty in para 7 of the petition.

The respondent also prayed for custody, care and control of the children of the marriage as well as maintenance for herself and the children of the marriage.

The cause was certified as a defended cause, however, just before the hearing on 10th March, 2005, the parties recorded orders by consent in respect of custody of the children, maintenance and visitation rights.

The petitioner who is a soldier in the Armed Forces of the Republic of Kenya got married to the respondent on 31st December 1991 under Civil Law, after a period of cohabitation for 2 years.

According to him, the problems between him and his wife started in 1996 when his wife got a job in Nairobi, yet the family was living in Thika. She started complaining of the distance, and decided to leave the matrimonial home and live with friends in Juja which she considered to be near Nairobi.

The petitioner did not agree, but his wife left the matrimonial home, all the same.

Two years later in 1998, she started complaining about the schools which the children were attending. She referred to them as being "of low standards". She also complained that the estate in which they lived in Thika, was also of "low standards, though the house was hers". This led to the separation between the couple in 1998, with the respondent going to live with her sister in Ngong for almost 4 weeks, then they resumed cohabitation. Again in the year 2000, the couple separated over a dispute concerning his wife's travel to Kericho to attend a party organized by her brother. She stayed away from the matrimonial home for 3 weeks after which she went to her sister's house in Ngong, when the 2 disagreed. She stayed away for 5 weeks. Nevertheless they reconciled and resumed cohabitation, only to separate again in 2001, April.

This time the respondent suspected the petitioner of infidelity, a charge which he denied, but she left, taking the children with her and moved to her own house in Parklands, in Nairobi.

Soon after this the respondent moved the court and obtained an order for Judicial Separation, but even after this, they resumed cohabitation in August 2003, but only for 6 months during which period they received counseling from Church.

The petitioner explained that most of the problems were brought about by “power struggle between them”, as his wife was making unilateral decisions without consulting him, such as changing children from one school to another, having their son circumcised without letting him know, inviting her mother to come and stay with them without informing him.

The petitioner lamented that he was finally kicked out by the respondent, his wife this year, when he received a letter from a lawyer instructed by his wife to demand that he leaves the matrimonial house, which he finally did in February, 2005 though from December 2004, he used to sleep in the officers mess at the army. The respondent did not adduce any evidence in her cross petition for divorce.

From the evidence on record by the petitioner, evidence which was not challenged as the respondent did not adduce evidence in rebuttal, I find that the petitioner proved his case on a balance of probabilities to the effect that the respondent treated him with cruelty, and that is what caused the breakdown of the marriage between them.

The couple had two children as appears in para 3 of the petition. The petitioner confirmed that he had not condoned or colluded with the respondent to bring this Divorce Cause.

From the evidence on record therefore I proceed to dissolve the marriage between the petitioner and the respondent and direct that a decree nisi should issue straight away, and the same will become absolute within a period of one month from today. Further I direct that the consent orders recorded by the parties on 10.3.2005, shall be the orders of this court as pertains to custody, care and control of the children of the marriage, access and maintenance.

Dated at Nairobi this 13th day of April, 2005.

JOYCE ALUOCH

JUDGE