

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAKURU
DIVORCE CAUSE 5 OF 2004

D.S.H.....PETITIONER

VERSUS

S.P.K.B.....RESPONDENT

JUDGMENT

The petitioner, D.S.H filed divorce against his wife (the respondent) S.P.K.B. In his petition for divorce he has averred that since marrying the respondent at Siri Guru Singh Sabha in Nairobi on the 3rd of December 1995 he has been subjected to cruelty by the respondent. As a result of the cruelty, which he particularised in the petition, and further the desertion of the respondent from the matrimonial home, the petitioner averred that the marriage between him and the respondent had irretrievably broken down to the extent that the only remedy available was for this court to grant him a divorce from the respondent.

The respondent was served with a copy of the petition together with a notice to file her response within fifteen days from the date of service. The respondent did not enter appearance. Neither did she file a response to the petition for divorce filed by the petitioner. Directions were taken and a certificate issued by the deputy registrar of this court that the proceedings herein were in order and the petition for divorce could therefore be listed for hearing.

At the hearing of the petition, the petitioner testified that he was married to the respondent on the 3rd of December 1995 at Siri Guru Singh Sabha temple in Nairobi. The certificate of marriage was produced as petitioners exhibit No. 1. After the marriage ceremony, the couple lived in Nakuru town as husband and wife. They were blessed with one child – namely S.H who is now seven years old. The petitioner testified that he wished the marriage between himself and the respondent to be dissolved. He testified that he had encountered a lot of problems in his marriage. He stated that the respondent had been cruel to him. She was a person of hot tempers and was stubborn – she could not take instructions issued by the petitioner. The respondent was also abusive and had refused to assist with the domestic work at home. The petitioner further testified that the respondent was quarrelsome and an introvert. She did not easily socialise with the petitioner’s friends thus making the petitioner to be ostracised from his friends. The petitioner’s efforts to have the respondent reform her behaviour had been in vain.

The petitioner further testified that he had been denied his conjugal rights by the respondent who had been uncommunicative and unco-operative when he raised the issue. The petitioner testified that the respondent had twice deserted the matrimonial home without his permission. In the first instance, the respondent went to Canada and stayed there for a period of six months. The respondent left behind the child of the marriage who was then a toddler. During this period that she was away, the respondent did not communicate with the petitioner.

The respondent only came back to their matrimonial home when the petitioner filed a suit before the court at Nakuru to compel the respondent to return to the matrimonial home. The petitioner testified that the respondent again left the matrimonial home in November 2004 and went to Canada to reside with her brother. Later the petitioner heard that the respondent had travelled to the United Kingdom where she is currently residing. The petitioner testified that he did not quarrel with the respondent or do anything that could have caused the respondent to desert the matrimonial home.

The petitioner further testified that all the efforts to be reconciled with the respondent had been in vain. The couples friends and elders of both their families had tried to reconcile them with no apparent success.

The petitioner stated that there was no chance that the marriage between himself and the respondent could work. It had irretrievably broken down and there was no chance of salvaging it. The petitioner prayed the court to grant him divorce and custody of the child of the marriage who is currently residing with him and is a standard 1 pupil at Melvin Jones Academy. He testified that during the subsistence of the marriage, the petitioner did not acquire any properties with the respondent.

I have read the petition for divorce filed by the petitioner herein. I have also considered the evidence that was adduced by the petitioner in this divorce proceedings. The petitioner has narrated a litany of complaints against the respondent that actually show that there no longer exists a harmonious relationship between the petitioner and the respondent. A hallmark of a successful marriage is communication. In the instant proceedings the petitioner has testified that the respondent stopped engaging in any meaningful conversation with him. The petitioner gave an instance where the respondent was out of the country for six months but refused to communicate with him.

The petitioner has further testified that he had been denied his conjugal rights by the respondent. The respondent had further refused to participate in undertaking household chores such as cooking. The petitioner further narrated how the respondent no longer sought permission from him when she made a decision to be away from home. According to the petitioner, the respondent had been away from the matrimonial home since November 2004 when she went to Canada and then to the United Kingdom without permission of the petitioner. All the above instances narrated by the appellant establishes, on a balance of probabilities, that the marriage between the petitioner and the respondent has broken down to the extent that it may not be salvaged. There is no longer goodwill from the petitioner or the respondent to enable the marriage work.

In the circumstances of this case I do grant the petitioner his petition for divorce. Decree Nisi is hereby issued granting the petitioner divorce from the respondent. I hereby declare that the marriage celebrated on the 3rd of December 1995 between the petitioner and the respondent at Siri Guru Singh Sabha Nairobi be and is hereby dissolved.

The Decree Nisi shall be made absolute three months from the date of this judgment.

The petitioner shall have the custody of the child of the marriage.

There shall be no orders as to costs.

DATED at NAKURU this 17th day of June 2005.

L. KIMARU

JUDGE