

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

Divorce Cause 119 of 2004

N.A.V.....PETITIONER

Versus

N.N.N.....RESPONDENT

JUDGMENT

The petitioner in this divorce cause sought for an order of dissolution of the marriage that was solemnized between him and the respondent on 20th day of December 1999 at Dagorretti within Nairobi Area under the Marriage Act Cap 150 of the Law of Kenya.

The petitioner is a British citizen domiciled in Kenya and the respondent is a Kenyan National residing in Ongata Rongai. There is one issue of the said marriage namely I.N. a girl child born on 21st December 1998.

Upon the solemnization of the said marriage the parties cohabited in two principal places namely Ongata Rongai between 1997 to 2000 and Kiserian between 2000 to 2001. This divorce cause was not defended and the registrar's certificate certifying the same as undefended cause was issued on 27th January 2005.

The petitioner gave evidence during the hearing of this matter and reiterated the allegations of desertion stipulated in the petition. According to the petitioner, the respondent resulted to serious alcohol drinking and at one time while under the influence of alcohol, threatened to cut the petitioner with a panga. Thereafter the respondent left the matrimonial home in August of 2001 and has never returned. The child of the marriage has been left with the petitioner who looks after her and she attends the same school where the petitioner is a teacher i.e. [particulars withheld]. Hence the petitioner sought for the order of custody and the respondent be allowed access of the child.

The petitioner has allowed the respondent to have access of the child during the weekends and the petitioner takes it upon himself to drop the child to the respondent's house and also pay Kshs.15,000/= per month to the respondent as alimony. He has no objection to continue with the same arrangement. I have given considerable thought to this petition, the evidence by the petitioner and other material placed before me. I am satisfied that the petitioner has been able to prove the allegation of desertion as provided for under Section 8(1) (b) of the matrimonial Causes Act which provides as follows:

“A petition for divorce may be presented to the court either by the husband or the wife on the ground that the respondent has deserted the petitioner without cause for a period of at least three years immediately preceding the presentation of the petition”

I am therefore satisfied that it is three years since the respondent deserted the petitioner and accordingly in the absence of any evidence by the respondent to controvert what is said by the petitioner I hereby allow the petition as prayed. I am also satisfied that this petition was not brought by collusion. In the circumstance the marriage that was solemnized on 20th December 1997 is hereby dissolved. The decree nisi shall issue for the statutory period of 3 months after which it may be made absolute.

The custody of the child shall be granted to the petitioner but the respondent shall be entitled to access

during weekends and school holidays as the parties may workout the details.

The petitioner to pay Kshs.15,000/= to the respondent being towards the respondent's maintenance.

Any party shall be at liberty to apply. It is so ordered

Judgment read and signed on 10th June 2005.

MARTHA KOOME

JUDGE