



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT MOMBASA
Divorce Cause 4 of 2004

M S NPETITIONER

VERSUS

P B

C KRESPONDENTS

J U D G M E N T:

On 9.10.1985 the Petitioner Mary Susan Nyonga was married to Patrick Barasa Toywa at the Kajiado District Commissioner's Office, Kajiado District under the Marriage Act Cap 150 Laws of Kenya. After celebration of marriage the Petitioner and Respondent cohabited at Loitokitok, Nakuru and Mombasa. There are 4 children of the marriage now surviving namely;

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The Petitioner and the Respondent are domiciled in Kenya.

The Petitioner complains that since the celebration of marriage the Respondent has committed adultery with Carol Kidiwa with whom he is cohabiting. Also the Respondent has since the celebration of marriage been guilty of cruelty to the Petitioner and the children of the marriage. The particulars are specified into he petition.

The Respondent moved out of the matrimonial home in Kizingo and went to cohabit with the named woman. He has built a home for her in rural area before building one for Petitioner indicating she is not welcome to their ancestral home. The Petitioner has not connived at or condoned the adultery and cruelty outlined.

The Petitioner therefore seeks dissolution of her marriage with the Respondent, custody care and control of the minor children of marriage and maintenance for herself and the children. The Petitioner also claims costs.

I have considered the evidence offered by the Petitioner. It is not contradicted because although the Respondent and his advocate were served with the hearing date they failed to turn up for the hearing. The

Petitioner denies all the allegations made by the Respondent in his answer to the petition. She asserts that she is a responsible parent. She has been residing with them, feeding and clothing them and providing shelter for them and even paying their school fees single-handedly since the Respondent moved out of matrimonial home.

It is my finding that the marriage of the Petitioner to the Respondent has broken down and is beyond retrieve. She says she has tried reconciliation through the parents and it has not worked. I am satisfied that she has proven her petition and I hereby enter judgement in her favour and declare her marriage dissolved.

I declare Decree Nissi to be made absolute after the expiration of six months.

Regarding the custody, care and control of the minor children of the marriage, she appears to me the best-placed parent to look after the minor children of the marriage.

There is no evidence that she is incapable of performing her obligations towards the said children or that she is unfit.

I grant to her the custody, care and control of the said minor children. I order that the respondent father of the children shall pay monthly maintenance to be assessed upon application made by Chamber Summons as soon as possible.

Both parties shall file affidavit of means as provided under Rule 44 Matrimonial Causes Rules. The Respondent shall pay permanent maintenance to the Petitioner who does not have any employment at the rate of sh. 5,000/= per month.

The consequence therefore is:

(a) The marriage between the parties celebrated on 9.10.85 is hereby dissolved. (b) Decree Nissi shall issue to be made absolute within the next 6 months.

(c) Custody, care and control of the minor children of the marriage is granted to the Petitioner, their mother.

(d) Maintenance for the Petitioner granted at the rate of Sh. 5000/= per month commencing the date of the judgement.

(e) Maintenance for the minor children to be assessed upon application.

(f) The Respondent to pay the costs of these proceedings to be agreed upon or to be taxed.

Dated 29th July 2005.

J. KHAMINWA

J U D G E