

IN THE HIGH COURT OF KENYA AT NAIROBI
DIVORCE CAUSE 9 OF 2003

E.M.M..... PETITIONER

VERSUS

D.M.T..... RESPONDENT

JUDGMENT

E.M.M, petitioned this court for Divorce on grounds of her husband’s cruelty which she particularized in para 7 of her petition. She also prayed for custody of the 2 children of the marriage, and there was a third prayer for costs of the petition. She later amended the petition to include prayers for desertion and adultery. The respondent D.M.T in his answer to petition also cross petitioned for divorce on the grounds of the petitioner’s desertion as stated in paras 4 and 7 of his cross petition. He prayed the court to allow his cross petition with costs, and allow him access to the children of the marriage. The court file shows that there were several developments in this cause, and on 3rd February, 2005, the Deputy Registrar, Family Division, certified the cause to be heard as an “undefended cause”.

The petitioner gave evidence in court to the effect that she got married to the respondent on 8th February, 1988. They had 2 children whose names and dates of birth are given in para 4 of both the petition and amended petition. She confirmed that there have never been any previous proceedings between them. They have lived separately for the past 7 years, beginning from December 1998, when she left the matrimonial home in Jamhuri Estate, Nairobi. She left after a culmination of several years of both physical and verbal abuse by her husband, and she felt her life was not safe anymore. Recalling her last day in the matrimonial home, she said her husband had threatened to beat her with a “rungu” – i.e. big stick. This was at night when she returned home from an office party, to which she had invited her husband, but he refused to go. The petitioner again recalled an incident sometime in 1990 when her husband beat her up at a wedding party, whilst she was pregnant. She went to her parents for a while after that. The petitioner also recalled that she left the matrimonial home in 1989 for a while, because her husband used to beat her in front of the children or her family if they come visiting.

The petitioner and respondent had many meetings with family members. The petitioners brother felt that her husband needed medical attention. The petitioner pursued this with him and he reported to her that he was seeing a psychologist, but she did not know the details as they never went together. The petitioner complained that her husband threw her out of the matrimonial home and locked the gate behind her. She took the children with her and rented a house in Kileleshwa in Nairobi. The petitioner said that her husband is currently living with one Rebecca Ikiara. They have 2 children. This information has been given to her by her 2 sons who always visit their father, the respondent. The petitioner has not condoned or connived at the respondent’s acts of cruelty, adultery or desertion.

She lives with her 2 children and is able to feed them and pay school fees for them. She has never asked the respondent for assistance and has left it for him to get involved, if he so wishes. She, however, prayed for the costs of the suit. The respondent did not offer any evidence but he was present in court.

The petitioner’s evidence was not challenged, and from that evidence, I find that the marriage between the petitioner and the respondent has broken down due to the respondent’s cruelty as detailed by the petitioner. Though the couple have lived apart for several years, I found no evidence to show that the petitioner has either condoned, nor connived at the respondents act of cruelty. From the evidence on record which I believe I find that the petitioner has proved her case on a balance of probabilities and I proceed to grant an order dissolving her marriage to the respondent. I grant custody of the 2 children to the petitioner who has been having such custody since she left the matrimonial home with the children.

The couple seemed to have made their own arrangements as to access by the respondent. I direct them to observe those arrangements which seem to be working quite well.

Finally, I direct the decree nisi to issue straight away, and the same to be made absolute within a period of one month from today.

Because of the nature of these proceedings, I have decided that each party should pay their own costs occasioned by this divorce.

Dated at Nairobi this 14th day of July, 2005.

JOYCE ALUOCH

JUDGE