



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT MOMBASA

DIVORCE CAUSE 46 OF 2003

F.MPETITIONER

VERSUS

M.T.J.....RESPONDENT

J. G.....CO-RESPONDENT

J U D G M E N T

The Petition filed by F.M “Petitioner” shows that she contracted a marriage with Respondent on 12/12/1988. She was a spinster then. After the ceremony of marriage they cohabited in Kisauni, Mtopanga in Mombasa.

The marriage was blessed with two children – daughters F.D and E.I who later perished in a fire while residing with and in the house of Respondent their father. Their death caused ill-feelings between the parents. The Petitioner who was living separately demanded a post mortem on the bodies and a public inquest but the Respondent refused to permit these procedures. So there is no child surviving between the Petitioner and the Respondent.

In her evidence the Petitioner stated that she left matrimonial home when in 1994 the husband “Respondent” chased her away after beating her. She went away with children but he later persuaded her to hand over the said children to him. The Respondent admitted that they have lived apart for 11 years now. He said Petitioner was unfaithful in December 1994. The Petitioner also complains that the Respondent has committed adultery with several women over the years. She has given their names in the petition. One of the women is named as a co-respondent. It does not appear as if any of the women were served with Notices to intervene.

However, the Respondent has admitted that he has now another family. He has therefore admitted adultery.

The Petitioner seeks dissolution of marriage. The Respondent also does seek dissolution alleging adultery which the Petitioner admits and she has got two children out of marriage.

The Respondent admits that the children are not his biological offspring but claims them and asks for legal custody. He has never maintained them or supported them.

Upon hearing the evidence of both parties and upon reading their verified pleadings, I have come to the conclusion that there is the offence of desertion by the Respondent. He forced her out of house by his acts of cruelty. The desertion has continued for at least 3 years preceding the divorce petition. I also find

that the circumstances of the death of these children the Petitioner has lost confidence in the Respondent as a husband and each party has sought comfort outside the marriage. This marriage has completely broken down and it cannot be supported. Both parties ask for dissolution of the marriage.

I find that the petitioner has proved her petition on ground of desertion. I enter judgement for her and declare dissolution of her marriage with the Respondent. Decree Nisi shall issue to be made absolute after expiration of 4 weeks from the date of this judgement.

I decline to grant orders of custody of the two children now born to the Petitioner to the Respondent he does not know them and he has another family.

Petitioner shall continue to have their custody care and control. She is their mother and the best person to take care of them.

However, I order the Respondent to pay the Petitioner's costs of this suit.

Delivered and dated at Mombasa this 12th day of October 2005. J. KHAMINWA

J U D G E

12/10/05

Khaminwa, J

Jason – Court Clerk

Mr. Omotto h/b

Read in his presence.

KHAMINWA, J