

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
DIVORCE CAUSE NO. 40 OF 2002

H A O PETITIONER

- Versus -

E S J RESPONDENT

J U D G M E N T

The Petitioner, **H A O**, has petitioned this court for divorce. According to her petition, on the 22nd August 1992 she married the Respondent, Edward Shida Josiah, in a marriage ceremony conducted at the C.P.K. church Kaloleni in Kilifi District of Coast Province. She produced a marriage certificate, Exhibit 1, to that effect.

After the marriage the two lived and cohabited at Bakarani in 1992 and Mtopanga between 1992 and 2001. There are two issues of the marriage, **K T S** aged 9 years and Stephanie **C S** aged 6 years. The Petitioner further states in her petition that in July 2001 the Respondent deserted the matrimonial home and went to live elsewhere with another woman. On the 20th June 2002 he returned to the matrimonial home and assaulted her. That is not all. He locked her and the children out of the house until the Kisauni location chief intervened. She has therefore filed this petition for divorce on grounds of desertion and cruelty. She seeks the dissolution of the marriage, custody of the children of the marriage, division of the matrimonial property, costs of the petition and any other relief that this court may deem fit to grant.

The Petitioner testified before me and said that they were happily married for 9 years and that in July 2001 the Respondent deserted the matrimonial house and went to live with another woman. On 20th June 2002 the Respondent returned to the matrimonial home and seriously assaulted her. She reported the matter to the police and got a P3 form. On the same date the Respondent locked her and the children of the marriage out of the matrimonial house. It took the intervention of the Kisauni location chief to get her back into the house. He has however not returned since then. She now lives alone with the children. She provides for them and pays their school fees. She said they have two pieces of property which they bought jointly. She would like to have her share. She finally prayed for divorce and custody of the children.

The Respondent had been served with the petition. He never entered appearance or file a reply or any document in opposition. What I heard is therefore a formal proof.

I have considered the evidence adduced by the Petitioner. It is uncontroverted and I have no reason to disbelieve it. The Respondent is obviously not interested in the marriage any more. If he was he could have contested this petition. In the circumstances I grant the petitioner's prayer for divorce and order the dissolution of the marriage between her and the Respondent. I also grant her custody the children of the marriage. As to the division of the matrimonial property I think that should be dealt with in separate proceedings under the English Marriage Woman's Property Act of 1882. The Respondent having not contested this petition I order that the Petitioner meets her own costs of this petition.

DATED this 24th day of February 2004.

D.K. Maraga

Ag. JUDGE