

V C v A M O

High Court, at Kericho February 23, 2004

Musinga Ag J

Divorce Cause No. 5 of 2003

February 23, 2004, Musinga Ag J delivered the following Judgment.

The Petitioner filed a petition for a divorce against the Respondent on 18th March, 2003. She stated that they married on 31/1/94 and she produced a Certificate of Marriage issued under the Marriage Act Cap 150 of the Laws of Kenya. During the subsistence of the said marriage they were blessed with three children who were aged 12, 8 and 6 years at the time of filing the petition. The Petitioner stated that since the celebration of the marriage the Respondent had treated her in a cruel manner by showing total lack of love to the petitioner thereby occasioning her unnecessary mental anguish. The Respondent also failed to seek treatment for the Petitioner when she was sick from 1994 upto 1996. She also testified that sometimes in 1995 the Respondent kept a kitchen knife under the matrimonial bed and he failed to give any satisfactory explanation to the Petitioner as to why the knife was there.

The Petitioner further stated that the Respondent had deserted the matrimonial home since 1996. The Respondent was also accused of committing adultery with a lady known as Jackline with whom he was living and they had two children. The Petitioner testified that all the efforts at reconciliation had borne no fruits and according to her the marriage had irretrievably broken down. She therefore urged the court to dissolve the marriage between her and the Respondent and she be granted custody and maintenance of the three issues of the marriage as well as the costs of this matter.

The Respondent was served with the petition but he chose not to appear and defend the same. The Applicant has proved her claim on a balance of probabilities and consequently I dissolve the marriage between the Petitioner and the Respondent and a Decree Nisi shall issue forthwith. The Petitioner is also granted custody of the three children of the dissolved marriage as well as the costs of the petition. To enable the court make an appropriate order regarding maintenance of the three children, I direct the Petitioner to file an affidavit of means within the next seven days from the date hereon. The file should thereafter be placed before me for final orders.