

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
DIVORCE CAUSE NO 91 OF 2003

F W M.....PETITIONER

VERSUS

J O O'1ST RESPONDENT

C N.....2ND RESPONDENT

JUDGMENT

On 1st July 2003 F W M filed this Petition against J O O for dissolution of their marriage formally solemnized on 9th November 1994 and also cited C N as the Second Respondent thereto. Prior to the formalisation of the said marriage, the Petitioner and the 1st Respondent had cohabited as man and wife since 1985.

The Petitioner's marriage to the Respondent was conducted at the Office of the Registrar of Marriages in Nairobi under the provisions of the Marriage Act (Cap 150). A certificate of marriage number [particulars withheld] was issued by the presiding Marriage Officer. Subsequently, the Petitioner and the 1st Respondent continued cohabitation as man and wife, and established a matrimonial home at Kahawa Army Barracks in Nairobi. According to the Petitioner, the said marriage was blessed with three children namely: J N born in 1986; E B born in 1988 and J N born in 1990.

The Petitioner seeks for dissolution of the said marriage to the Respondent on grounds of cruelty and adultery as particularized in paragraphs 9 and 10 of the said Petition. Upon being served with a copy of the Petition and Notice to Appear, the First Respondent duly entered appearance but failed to file an Answer within the time prescribed by the relevant Rules. The second Respondent did not either enter Appearance nor file an Answer to these proceedings. When the Petition came for hearing on 15th January 2004 the said Respondents were absent and thus the hearing proceeded as undefended cause.

I have carefully considered the testimony of the Petitioner. I have also scrutinized and inquired into the alleged grounds of divorce as contained in the petition suit. I am satisfied that the First Respondent has during the subsistence of the said marriage been persistently cruel to the Petitioner on the basis of the evidence of the Petitioner and stated conduct of the First Respondent as outlined in paragraph 9 of the said Petition.

I am thus satisfied that the said marriage of the Petitioner to the First Respondent has irretrievably broken down on the singular ground of cruelty of the First Respondent to the Petitioner as particularly more pleaded in the said Petition. I am unable to make any finding on the said ground of adultery for want of adequate evidence.

I am satisfied that there has not been any connivance or condonation on the part of the Petitioner and further that no collusion exists between the Petitioner and the First nor the second Respondent. Lastly, I am satisfied that the Petition has not been presented or prosecuted in collusion with either the First or the Second Respondent and further that there has not been unreasonable delay in presenting or prosecuting the Petition.

I am satisfied on the basis of the evidence adduced that the case for the Petitioner has been proved beyond reasonable doubts. I hereby therefore pronounce a decree of divorce and order that the marriage between the Petitioner and the First respondent be and is hereby dissolved. A decree nisi shall henceforth issue, the same to be made absolute upon application. I grant custody of the eligible children of marriage to the Petitioner.

Consequently, the Petitioner is hereby granted liberty to apply for necessary orders of maintenance. The costs of the Petition shall be met by the First Respondent.

DATED and DELIVERED at Nairobi this 12th day of February, 2004.

P. J. KAMAU

AG. JUDGE