



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
DIVORCE CAUSE NO. 93 OF 2003

A N M.....PETITIONER

Versus

J M N.....RESPONDENT

JUDGMENT

This is a petition seeking for Judicial Separation by the petitioner who married the respondent on 13th December, 1997 at St. Francis Church in Karen.

After the solemnization of the union the petitioner and respondent cohabited as husband and wife principally at the Garden Estate in Nairobi. They have three issues namely:

- 1) N M aged 5 years
- 2) K M aged 3 years
- 3) M M aged 1 year

The petitioner testified during the hearing and gave a detailed account of incidences of cruelty both physical and verbal that the respondent has subjected her to. The respondent has also committed adultery as detailed in the petition. The respondent did not appear during the hearing. I have also looked at the answer and cross-petition whereby the respondent is also petitioning for Judicial Separation. The petitioner is still living in the same house with the respondent for the sake of her children who are of very tender age. She also seeks for an order for the custody of the three minor children.

I have considered the evidence by the petitioner, the petition filed herein as well as the respondent's answer and cross-petition very carefully. Both parties have sought for Judicial Separation and they have also made serious allegations about one another. Whichever way one looks at this marriage, the prayer for Judicial Separation is inevitable. The only issues that require consideration is the custody of the children and the issue of maintenance. The petitioner would wish to be granted custody of the minor children but the issue of maintenance can be followed up later. Unless there are other circumstances it is generally acceptable that children of such tender age 1 year to 5 years the mother is the best suited to have custody. Since no special circumstances have been provided to persuade this court other wise, I am inclined to grant the petitioner the custody care and control of the children.

Accordingly the petitioner is granted legal separation and be no longer bound to cohabit with the respondent.

The petitioner is also granted custody of the children during the Judicial Separation.

There be liberty to apply.

Judgment read and signed on 6th February, 2004.

MARTHA KOOME

JUDGE