



JN v RWN & another (Divorce Cause 158 of 2001)
[2004] KEHC 1709 (KLR) (Family) (26 March 2004) (Judgment)
JOHN NJUGUNA vs ROSEMARY WANJIKU NJUGUNA [2004] eKLR
 Neutral citation: [2004] KEHC 1709 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
DIVORCE CAUSE 158 OF 2001
MK KOOME, J
MARCH 26, 2004

BETWEEN

JN PETITIONER

AND

RWN 1ST RESPONDENT

JM 2ND RESPONDENT

JUDGMENT

1. The petitioner in this cause has sought for the dissolution of a marriage solemnized on 15th December 1979 between him and RWN at the Catholic Church [particulars withheld]. After the solemnization of the marriage the parties cohabited in Nairobi and in Muranga.

They have five (5) children in the said marriage namely:-

- a) EMN – 27 years
- b) SW – 25 years
- c) EW – 23rd years
- d) GM – 21 years
- e) TW – 2 years

2. The respondent and co-respondent did not appear during the hearing although this petition was certified as a defended cause.



3. During the hearing the petitioner adduced evidence in support of his two grounds for divorce namely adultery and cruelty. The petitioner testified how the respondent became unfaithful to him and was openly committing adultery with several men cited in the particulars of adultery and in support of paragraph 6 of the petition.
4. The petitioner also gave detailed incidences of the particulars of cruelty meted out on him by the respondent. According to the petitioner, the respondent is very violent person who also incited the children to beat the petitioner. Apart from physical violence, the respondent was extremely quarrelsome and has also lodged malicious and baseless complains with the Local chief and police thereby making the petitioner be summoned and interrogated by police.
5. Since 29th March 2001 the respondent left the matrimonial home.
6. The petitioner also relied on the evidence of two witnesses as follows:
7. PW2 PNM who is the petitioners nephew. According to this witness, he come to know the respondent due to her bad reputation. He testified how the respondent had a love affair with a certain Mr. Karanja.
8. The respondent was a choir leader and the said Karanja was the Chairman of [particulars withheld] Catholic Church. The witness was too in the choir and there were complaints about the respondent and Karanja. He also used to see the vehicle of the said Karanja parked outside the respondent's home and he therefore formed the opinion that there was a love affair.
8. The other witness was FK who is also a relative of the petitioner through marriage. He too testified of how he witnessed another incident whereby the respondent was committing adultery with a fellow teacher called M. When M became a born again Christian he announced in the staff room in the presence of this witness that he would stop his movements with the respondent. These incidences of adultery took place between 1981 and 1999 and were known to the petitioner. These allegations of adultery are very subjective. None of these witnesses actually saw the respondent in an act of adultery.
9. They heard about the respondent from other people or assumed that the respondent was committing adultery due to certain circumstances. I find this speculative evidence unacceptable more so because the petitioner continued to condone the acts of adultery as he had a child with the deceased as late as 3 years ago. I therefore decline to grant the divorce on the ground of adultery.
10. As regards the ground for cruelty, the petitioner personally testified of how he underwent the agony of physical and verbal violence. I find that the petitioner has been able to prove the grounds of cruelty.
11. I am also satisfied that the petitioner has not condoned the cruelty nor was this petition presented or prosecuted in collusion.
12. Accordingly I pronounce a decree of divorce and dissolve the marriage solemnized between the petitioner and respondent. The *decree nisi* shall issue for a period of 6 months.
13. No order as to costs.
14. It is so ordered.

JUDGMENT READ AND SIGNED ON 26TH MARCH 2004.

MARTHA KOOME

JUDGE

