

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
DIVORCE CAUSE NO. 27 OF 2000

JOSEPHINE NJOKI MULLI PETITIONER

Versus

JOSEPH MULLI RESPONDENT

J U D G M E N T

This is an uncontested divorce cause. The Petitioner states that she married the Respondent on the 31st May 1980 at the Registrar of Marriage's Office at Sheria House Nairobi. Thereafter they lived and cohabited in Nairobi up to 1992 when they moved to Mombasa. In Mombasa they lived together up to 1995 when they seem to have separated. There are five children of the marriage. The petition is presented on grounds of cruelty and desertion. The particulars of cruelty are that the Respondent on several occasions assaulted the Petitioner and the children of the marriage thereby causing the Petitioner mental anguish and distress, that the Respondent has neglected the Petitioner and the children of the marriage in failing to pay their school fees and maintenance expenses thereby subjecting them to hardship and that on the 10th August 1995 the Respondent wielding an axe menacingly threatened to kill the Petitioner. The Petitioner was only saved by her children and neighbours. That did not only cause her fear but also subjected her to mental anguish, distress and great humiliation. On the ground of desertion the particulars are that on several occasions prior to 1995 the Respondent used to absent himself from the matrimonial, at times, for several days, without explanation thereby denying the Petitioner consortium. That in 1995 the Respondent deserted the matrimonial home and has not returned since.

During the hearing the Petitioner testified and called no witnesses. She said that after their marriage they lived and cohabited in three estates in Nairobi before moving to Mombasa in 1992. They have five children of the marriage. She further stated that during all the time they lived together the Respondent used to drink heavily. He used to go home drunk and beat up the Petitioner and the children without any provocation or reason at all. He was never supportive at all. The Petitioner shouldered all the household expenses and paid school fees for children. On the evening of 9th August 1995 they quarrelled. The Respondent grabbed an axe and menacingly threatened to kill the Petitioner. She was saved by the neighbours after their children screamed. At the end of October the Respondent simply packed his belongings and left the matrimonial home never to return. She has had little contact with him since. She understands that he is now living in Kitui after his younger brother threw him out of his house. She therefore prays for divorce and custody of the marriage children.

The Respondent was served with the petition but ignored it. He did not file any answer to petition or cross-petition. I accept the Petitioner's uncontroverted testimony that the Respondent was cruel to her and in particular that he almost killed her on 9th August 1995. I also accept her evidence that the Respondent deserted the matrimonial home in October 1995 and has not returned since. She has not condoned the cruelty and their marriage has irretrievably broken down. There is nothing therefore to be gained keeping it alive. In the circumstances I grant this petition and dissolve the marriage between the Petitioner and the Respondent. Save for two the other three children of the marriage are adults. I grant the custody of the minor children to the Petitioner. As the Respondent did not defend this petition I order that the Petitioner shall bear her costs of this petition.

DATED this 25th day of March 2004.

D.K. Maraga

Ag. JUDGE