

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
DIVORCE CAUSE NO. 33 OF 2001

JOSEPH ROCK PLAINTIFF

- Versus -

TINA MUKIRI DEFENDANT

J U D G M E N T

On the 27th August 1999 the Petitioner, a divorcee then aged 64, married the Respondent, a spinster then aged 19, at the Registrar's office at Mombasa. Before marriage the Respondent had worked for the Petitioner as a house maid for a period of about six months. The marriage does not seem to have been a happy one. It was bedeviled, according to the petitioner, with quarrels and threats including one of bewitching the petitioner to become crazy and forget everything. The petitioner alleges that on the 4th July 2000 he was attacked by thugs in an attempt to steal vital documents from his safe. He blamed the Respondent for it because, according to him, she latter bragged as having organized the attack. The Respondent could sometimes go away from the matrimonial home for long periods without consent of the petitioner. On several occasions, the petitioner claims, the Respondent verbally abused him and threatened him with physical violence in front of his friends and neighbours thus causing him great embarrassment. The petitioner could not take it any more.

On 1st August 2001 he obtained leave of this court under section 6(1) of the Matrimonial Causes Act and petitioned for divorce on grounds of cruelty and desertion. The particulars of cruelty he has listed in his petition include the two I have related above of organizing thugs to attack him and the verbal abuses in front of friends and neighbours. The others are persistent verbal abuses, threats to kill or bewitch the petitioner. He claimed that these acts of cruelty caused him mental anguish and made that cohabitation impossible. On desertion the petitioner stated that the respondent apart from previously deserting the matrimonial home for long periods without explanation she has since December 1999 permanently deserted the matrimonial home. He further stated that attempts to reconcile them only created a form for further verbal abuses and threats. He reckons the marriage has irreparably and irretrievably broken down and prays for divorce.

The respondent filed an answer to petition and also cross petitioned. While admitting that the marriage has irretrievably and irreparably broken down she said the same is not on account of the allegations made in the petition but on account of the Petitioner's high handed, cruel, abusive, immoral and illegal behaviours.

On the ground of adultery the Respondent portrayed the petitioner as a sex maniac with an insatiable sexual appetite always chasing after young girls. She alleged that he openly commits adultery with many women some known to the Respondent. She singled out one Rehema Juma with whom she said the petitioner openly and notoriously commits adultery. All this, she alleges, happening in the small town of Ukunda has made the Respondent a laughing stock thus making her very depressed and miserable. She also alleges that the petitioner is a very cruel man who on several occasions threatened to shoot her and thereafter shoot himself. On the incident of attack on the petitioner she blamed it on the prostitutes and loose women about six of them, that the petitioner moved with at the time. She said that the police arrested her and her mother but found no evidence of complicity and did not prefer any charges against them. Finally she stated in her answer to petition and cross petition that the petitioner enticed her from school and ruined her ambition of becoming an air hostess and claimed maintenance of Sh. 50,000/= per month.

The Petitioner testified before former Commissioner of Assize Omwitsa and called four witnesses.

Apart from one incident when he said the Respondent beat him with a sweeping broom the rest of the petitioner's evidence was a repetition of what is contained in his petition which I have summarized herein above. The four witnesses the Petitioner called testified mainly on the Petitioner being a good neighbour and denied the allegation that he moved with many women. P.W.2 added that the Petitioner and Respondent fought frequently but gave no particular dates of those fights. He also said that the Respondent beat the Petitioner from time to time and also gave no particular dates when that happened. He said he knew about that from the continuous noise that came from their house.

The Respondent chose not to testify or call any evidence. Counsel also did not make any submissions and asked me to go by the evidence on record and give judgment. Each, however, asked for divorce.

The marriage between the Petitioner and the Respondent, although formally celebrated and I have no doubt that it was consummated, is not one that can be called a marriage in the strict sense of the term. This is because the parties married on 27th August 1999 and by October of that year they were already quarrelling and trading accusations. They also threatened to kill each other. Since December 1999 they have not lived together. In the absence of any evidence from the Respondent to controvert the one tendered by the Petitioner and his witnesses I find that the Petitioner has proved the grounds of cruelty and desertion. The marriage has irretrievably and irreparably broken down. In the circumstances I grant this petition and order that the marriage between the Petitioner and the Respondent is hereby dissolved. The cross petition is hereby dismissed. Each party will bear its own costs.

DATED this 24th day of March 2004.

D.K. Maraga

Ag. JUDGE