

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISUMU
DIVORCE CAUSE NO. 3 OF 2004

C K M PETITIONER

VERSUS

K A N RESPONDENT

JUDGEMENT

The petitioner alleges to have been married under the Marriage Act at Goibei P.A.G. Church and she was issued with marriage certificate No. 250165. The marriage was between her and the respondent on 22nd August 1992 and the marriage certificate is in the custody of the respondent. The respondent was properly served according to the return of service which is on the Court file but he failed and/or neglected either to file documents or to appear for the hearing of the petition.

On 21st day of April 2004 the petitioner appeared before me and gave evidence supporting her petition for divorce. She stated that as a result of the marriage which was consummated sometimes in 1992, she was blessed with two children and the two children do stay with her and urged me to grant her full custody as she needs no maintenance from the respondent. In support of her petition for divorce, she stated that her marriage to the respondent has not been stable but was full of frequent violence, though physical assault sexual harassment though constant and persistent adultery and lastly the respondent deserted the matrimonial home.

The petitioner stated that as a result of the constant and endless physical assault and neglect by the respondent of her conjugal obligation, she left the matrimonial home sometimes in 1995 after many reconciliatory meeting failed to bear fruits. However to give the marriage a chance she went back in 1999, but unfortunately the situation has deteriorated as per the petitioner. In short she confirms that the marriage has not been working because of the actions and omissions of the respondent. She stated that the respondent even infected her with sexually transmitted diseases and this has caused her a lot of embarrassment and mental anguish, therefore she urged me to dissolve the marriage and give her the full custody of the two children and finally she stated that she needs no maintenance from the respondent.

On my part my task was simple and it is whether the evidence tendered would justify the grant of dissolving the marriage between petitioner and the respondent. I must confess that it has been extremely difficult for me to bear the agony and the frustration the petitioner went through as a result of the deplorable action of the respondent. It must be noted that marriage is consummated in a friendly and lovely manner and the separation and/or dissolution of the same must be as far as possible be done in a similar situation. A party must not push the other simply because he/she is not interested in the union for that would amount to punishment. It is my view that parties must disengage from a Union of Marriage in a sober and human way in order to fulfil an obligation to each other.

My first duty is to inquire whether the petitioner has not connived and/or condoned the facts alleged against the respondent. I must also establish whether there is collusion which exists between the petitioner and the respondents with a view to jointly dissolve the marriage. Having heard the petitioner and seen her demeanor, especially the amount of anger agony and frustration that she depicted, I am satisfied that there exists no collusion in the presentation and prosecution of this petition. It is also my judgement that the petitioner did not condone, neither did she connive with the respondent. To me her frustration were evident and her agony was intense, therefore the above factors do not exist in respect of this petition and I am satisfied, she is merited for the prayers sought in the petition.

According to the evidence of the petitioner, she left the matrimonial home first in 1995 and second time in 1999 and the petition was filed in Court this year, therefore there is a ample evidence that there

has been separation between the two parties for a period of three years which is a factor for my consideration.

The reasons for seeking divorce by the petitioner has been properly proved and I am certainly in agreement with her the marriage has no chance of redemption. It must be dissolved to end the demeaning and degrading of the petitioner and to give her an opportunity to re-start her life a fresh away from the cruelty of the respondent. There is sufficient proof that the respondent is guilty of Adultery desertion and inhuman behaviour of torture and mistreatment, which the petitioner must have a way out. The pain and suffering of the petitioner must come to an end and the any way out is to grant the prayer in her petition.

C K M, you may have been battered, you may be bitter, you may be down and disappointed with the conduct of the petitioner but I shall on my part fulfil my **judicial obligation**, by granting you the prayers in your petition. I will pronounce a decree nisi. I am aware the law requires that every decree for divorce in the first instance be a **decree nisi** for a period of six months and be cause of the special circumstances of this matter, the decree shall be absolute after the expiry of two months.

Lastly in the interest of justice and exercise of my inherent powers, I grant the full custody of the two children to the mother since she does not claim maintenance from the respondent. The respondent shall pay the cost of this petition.

Dated and Delivered at Kisumu this 3rd day of May 2004.

MOHAMED A. WARSAME

AG. JUDGE

Judgement delivered in the presence of:

The petitioner present

/moo