



MKA v ATD (Divorce Cause 1 of 2004) [2004] KEHC 1723 (KLR) (8 April 2004) (Judgment)

JOYCE KERUBO MAISIBA vs PATRICK GATHENGE MUNGA[2004] eKLR

Neutral citation: [2004] KEHC 1723 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
DIVORCE CAUSE 1 OF 2004**

MK KOOME, J

APRIL 8, 2004

BETWEEN

MKA PETITIONER

AND

ATD RESPONDENT

JUDGMENT

1. The petitioner in this divorce cause petitioned for the dissolution of the marriage solemnized on 31st day of May 2000 between her and the respondent ATD.
2. Upon the celebration of the said marriage the parties cohabited in various places in Nairobi until 15th October 2002 when the respondent left the matrimonial home with his belongings. There are two children of the said union, SA1 born on 6th day of May 1999 and SA born on 2nd day of August 2000.
3. This petition was undefended and was certified as undefended cause on 26th February 2004
4. The petitioner testified and gave evidence in support of the grounds for cruelty and particulars contained in the petition. According to the petitioner, the respondent works for Ian in Lokichogio and would therefore be on duty and away from his family.
5. The respondent was however entitled to two weeks of time to rest for every two weeks he has spent in the field at Lokiichogio. Whenever the respondent was off duty he would spend undue proportion of his time away from home, he would spend time drinking and only came home in the small hours of morning. The respondent withdrew from the petitioner and showed little or no interest in her and this caused the respondent emotional distress for which she sought counseling from the Amani Counseling Centre.
6. The climax of this matrimonial disharmony took place on or about September 2002, when the petitioner physically assaulted the respondent and thereby occasioned her actual bodily harm which



incident was reported at the police station. The respondent subsequently withdrew the complaint after being prevailed upon by her father. Eventually the respondent left the matrimonial home on 15th October 2002.

7. According to the petitioner all efforts to reconcile have not been successful and the differences are irreconcilable. The petitioner has been having the custody of the two children aged about 5 and 3 years respectively. She has been struggling to pay school fees for both of them, provide for their shelter, food and all other necessities.
8. The respondent is gainfully employed by the same organization that has employed the petitioner and he earns about Kshs.35,000/= per month within benefit. The petitioner sought for an order for dissolution as well as contribution to school fees by the respondent.
9. I have carefully considered the petition herein and the testimony of the petitioner. I am satisfied that the petitioner has since the celebration of the marriage been treated with cruelty by the respondent. For this reason, the petition has not been presented through collusion. Accordingly I pronounce a decree for divorce. A decree nisi shall issue for a period of 6 months.
10. The petitioner shall also have the custody of the two minor children. The respondent is ordered to pay a sum of Kshs.10,000/= every month towards the school fees of the two children with effect from 1st June 2004 until further orders.
11. The petitioner shall have costs of this litigation. Any party shall be at liberty to apply.

It is so ordered.

JUDGMENT DELIVERED AND SIGNED ON 7TH MAY 2004.

MARTHA KOOME

JUDGE

