

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY DIVISION
DIVORCE CASE NO.179 OF 2002

EKI.....PETITIONER

VERSUS

AK.....RESPONDENT

JUDGMENT

The petitioner in this cause, EKI, petitioned for the dissolution of the marriage solemnized between her and the respondent on 29th April 1993 before the Registrar's Office, Sheria House.

Upon the celebration of the said marriage the petitioner and respondent cohabited as husband and wife at the Langata Army Barracks until April 1997. According to the petitioner, the respondent was cruel to her. The petitioner suffered untold misery during the said marriage. The respondent committed adultery with other women and infected the petitioner with various sexually transmitted diseases which resulted in the petitioner suffering from severe menorrhagia and eventually loss of her uterus thereby rendering her completely childless. The respondent also failed to provide any support to the petitioner.

The respondent moved to Lanet on duty thereby leaving the petitioner without any support at all, and the petitioner was forced to vacate the house on 17th October, 1998. Since that time the parties have been living separately and according to the petitioner the marriage is irretrievably broken down. She therefore sought for an order dissolving the marriage and an order of maintenance, as she continues with medical treatment due to the health complications she suffered in the course of the marriage. The respondent testified in support of the answer to the petition and denied that he was cruel to the petitioner. Indeed he contended that he was instrumental and facilitated the petitioner who underwent an operation and treatment at the Memorial Hospital due to an abortion and miscarriage before marriage. The respondent also accused the petitioner of desertion and adultery and confirmed that the marriage has irretrievably broken down.

I have carefully considered the petition filed again, the answer to the petitioner and the evidence of both petitioner and respondent. Both parties blame each other of serious matrimonial offences and whichever way one looks at this marriage, it is irretrievably broken and an order for divorce is the only way out for these unfortunate parties.

The petitioner was a house wife married to the respondent, a Sergeant in the Kenya Army who is employed as a Education Instructor. The couple were housed at the Army Barracks. The petitioner was childless and vulnerable as she had no means of earning her own livelihood. The small business she operated was within the Army Barracks, also at the mercy of the respondent because when he did not want her, she was evicted from her small business premises without notice. She lost all her valuable items including money. I observed her demeanor in court and I am satisfied that she was a victim of domestic violence. From her position I am persuaded that she was in a weak position to perpetuate violence.

I am persuaded by her testimony and since she has petitioned for the dissolution of the marriage, she has proved her case to the required standard. On the other hand the respondent merely sought for the divorce petition to be dismissed. He did not crosspetition for divorce. These parties have not cohabited for the last almost six years since they separated. In the circumstances, I am also satisfied that this petition has not been brought through collusion and hereby pronounce a decree for divorce. The decree nisi shall issue for a period of six months and the decree absolute upon application.

The respondent shall continue to pay maintenance to the petitioner as per the consent orders made on

14th November, 2002.

Any party shall be at liberty to apply.

I shall award the cost of this litigation to the petitioner.

It is so ordered.

Judgment read and signed on 18th June 2004.

MARTHA KOOME

JUDGE