



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Divorce Cause 98 of 2003

CWI.....Petitioner

Versus

NMI.....Respondent

JUDGMENT

The Petitioner in this Divorce Cause sought for the dissolution of a marriage solemnized between her and the respondent on 26th November, 1993 at the Attorney General Chambers at Nairobi. Upon marriage the parties cohabited at three principal places namely,

Madaraka Estate

Nairobi West and South B.

There are five issues to the marriage namely,

1. RW
2. CN
3. WI
4. MI and
5. MM

All the children are over the age of maturity.

Both parties are domiciled in the Republic of Kenya. The petitioner testified in support of the petition and detailed the acts of cruelty that have been perpetuated by the respondent during the course of her marriage. This couple started cohabiting in 1971 and formalized their marriage in 1993. It is an old relationship. The petitioner carries on a retail business at Kenya Railways while the respondent is an Advocate of this court but not in active practice. The petitioner advanced 3 grounds upon which she is seeking for divorce. She complained that the petitioner has been unfaithful to her. In 1992, the petitioner had separated from the respondent who attempted to reconcile. The respondent admitted in writing that he was involved in “relationships outside the marriage”. The petitioner sought to rely on this letter which was produced as an exhibit. However, the petitioner did not accept these acts of adultery, she stated that they were the cause of her failed marriage. She did not forgive the respondent.

Apart from adultery, the petitioner complained of cruelty, she complained of having been beaten severally and on one incident in 1987 the petitioner was subjected to a physical assault and was thrown out of the matrimonial home with the children. This forced her to leave the respondent and move to her parents at Kiambu. These acts of cruelty were repeated again in 1989 when all the petitioner had done was to purchase a motor vehicle. The petitioner produced a letter that the respondent wrote to her dated 24th June, 1989 threatening her to move from the matrimonial home and also to remove the car she had purchased from the premises the letter states,

“You will need to remove your car and yourself from my premises with effect from now. You are of course at complete liberty to cart all yours, whatever the expression may imply to you.”

These acts of harassment continued until in January 1997 when the petitioner was forced to move out of the matrimonial home to Madaraka Estate. Even after filing this petition the respondent continued with these acts of aggression, quarrels and threats that makes the petitioner conclude that her marriage is irretrievably broken down. The respondent does not support the family in any way, he does not communicate even with the children. Due to the respondent’s behaviour and his unpredictability, the petitioner is so scared for her life and children. In addition to the dissolution of the marriage, she sought for a protection order, so that she can be able to continue living at the flat at Makadara Estate which is a City Council Flat allocated to the respondent.

The petitioner has been paying for the rent and utility bills and that being the only home she and the children know, she would like to continue living there .

The respondent choose not to give evidence but he gave extensive submissions on why the petition should be disallowed. The respondent urged the court to disregard the allegations of adultery as the cited persons were not served with the petition which is in contravention of the Matrimonial Causes Rules. He also submitted that the particulars of cruelty should not be admissible, as they are ambiguous and unspecified merely meant to strengthen a case that falls short of the statutory requirements.

I have given due consideration to the evidence presented before me by the petitioner and the respondent’s submissions. The respondent did not adduce any evidence to controvert the petitioner’s evidence. The petitioner’s evidence has not been challenged save that the respondent submitted that the evidence does not measure up to the required standard of proof

The petitioner testified and produced documents written by the respondent to support the allegations of cruelty and adultery. In the absence of any evidence to counter these allegations, I am satisfied that the petitioner has been able to prove her case. I am also satisfied that the petitioner has not condoned the cruelty nor has this petition been presented or prosecuted in collusion.

Accordingly I pronounce a decree of divorce. The petitioner also sought for an order that she be granted possession, care and control of the matrimonial home. This is really not the property of the respondent it is a rented property from the Nairobi City Council. However, the petitioner and the children are in occupation. She pays the rent and other utility bill since 1997. I see no reason why the order sought in prayer two should not be granted as this will not cause any prejudice to the respondent as he does not pay the rent.

Accordingly the petitioner’s marriage to the respondent is hereby dissolved. The decree nisi shall issue for a period of 3 months.

2. The petitioner is granted possession care and control of the flat No(PARTICULARS WITHHELD) Madaraka Estate

3. Each party to bear their own costs

Judgment read on 8th October 2004.

MARTHA KOOME

JUDGE