

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
DIVORCE CAUSE NO.47 OF 2000**

H.K.....PETITIONER

V E R S U S

M.N.M.....RESPONDENT

J U D G M E N T

The parties to these divorce proceedings were married on 21/11/1996 and with the consent of parties they used to reside together twice a year in April and December when the husband returned to his residence in Austria for the other months. This arrangement continued until 9th December, 1998 when the husband packed his things and left the wife with his marriage ring swearing never to return.

In Maintenance Cause No.2 of 2000 the wife was granted a maintenance order on 11.10.2001 in the sum of Kshs.25,000/- per month for her upkeep on the ground that the husband had deserted the wife and that he was committing adultery with her daughter (not with him). This file is still alive as there is an application to set aside that maintenance order.

In this case the husband H.K (Petitioner) seeks dissolution of the marriage on the grounds that the wife Respondent has committed adultery and that she has acted with cruelty towards him namely: verbal insults, embarrassment and humiliation before friends, threatened his life, that she is a habitual drunkard, has denied him conjugal rights. And for these reasons he has left matrimonial home since 9/12/1998.

The Petitioner also gave evidence in court. He said he was assaulted after the wedding on 21/11/96 and yet he continued residing with her until December 9/12/1998.His allegations that she has committed adultery are not proved by any evidence. His allegations of cruelty are ambiguous, vague, unsubstantiated and I find them not proved.

The Respondent denied these allegations and stated that the reason why the Petitioner moved from home is to enable him to commit adultery. The Respondent appeared in court and her demeanor was sober and respectable. I do not find her having done any wrong against the Petitioner. However, it is to be noted that the parties have not cohabited since December 1998 therefore the ground of desertion is completed but this ground is not alleged in the petition. It is also clear to the court that the Petitioner is seeking to dissolve his marriage to avoid the proceedings in the lower court and the orders for payment of maintenance to his wife.The Respondent does not seek dissolution of marriage.

I do not find the petition proved and the same is dismissed with costs to Respondent. Dated at Mombasa this 11th day of June, 2004.

JOYCE KHAMINWA

J U D G E

Read in presence of:-

Mr. Chalalu

Ms Amadi

JOYCE KHAMINWA, J.

The maintenance file from the lower court which was produced as an exhibit shall be returned forthwith.

JOYCE KHAMINWA, J.