

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

DIVORCE CAUSE 17 OF 2003

SC N PETITIONER

- Versus -

S M RESPONDENT

J U D G M E N T

SC, the Petitioner in this cause, married S M, the Respondent, on the 23rd February 1996 at a ceremony held at the District Commissioner's Office at Narok. They thereafter resided and cohabited at Narok and Mombasa. They have, however, not been blessed with any issue.

On the 29th May 2003 the Petitioner filed a petition seeking a divorce on the ground of cruelty. The Petitioner alleges in the particulars of cruelty that the Respondent whom she calls a habitual drunkard assaults her and uses abusive and obscene language in public when referring to her and that has caused her psychological torment. She further stated that the Respondent has since 1998 refused to cohabit with her. In her testimony she stated that between 1996 and 1997 the Respondent used to go home drunk, beat her up and used abusive language towards her. As a result she decided to stay apart in Mombasa and has now adopted a child without the knowledge or authority of the Respondent. She said the Respondent has never shown her any love.

On his part the Respondent testified and denied being cruel to the Petitioner. If anything, according to him, it is the Petitioner who has been cruel to him as she did not as much as console him when his father died leave alone attending his funeral. He further testified that at the time of marriage he was, to the knowledge of the Petitioner, already married to another woman and that marriage was and is still subsisting. He admitted that they have never cohabited since 1998. He also does not see any point in keeping the marriage alive any longer.

I have considered the testimony of the parties. Although the Petitioner has not tendered any document to prove that the Respondent assaulted her between 1996 and 1997 having watched the demeanor of the Respondent and his remark while cross-examining the Petitioner to the effect that there is nothing the Petitioner can do if he does not consent to granting her a divorce, I am satisfied that he treated the Petitioner with cruelty. I believe the Petitioner's testimony that he used abusive language towards her causing her psychological torment. Besides cruelty the marriage between the Petitioner and the Respondent was a nullity as at the time of marriage the Respondent was married to another woman and that other marriage was still subsisting.

As the parties themselves stated they have lived apart since 1998. Having had no issue there does not seem to be and bond between them. The Petitioner conceded that she has lost all love for the Respondent. The Respondent's contemptuous regard for the Petitioner shows that there is none forthcoming from him either. In the circumstances I hold that the marriage between the Petitioner and the Respondent herein has irretrievably broken down and no good purpose will be served by keeping it alive any longer. Consequently I grant this petition and order the marriage between the Petitioner and the Respondent dissolved. Each party shall bear its own costs.

DATED and delivered this 17th day of December 2004.

D.K. Maraga

JUDGE