

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
DIVORCE CAUSE NO. 55 "B" OF 2001

J K L..... PETITIONER

VERSUS

N B L RESPONDENT

JUDGMENT

The Petitioner in this divorce cause, J K L, got married to the Respondent, N B L, under the Marriage Act {Cap. 150 Laws of Kenya} at the District Commissioner's Office, Kericho, on 20th February 1989.

Thereafter they cohabited as husband and wife at Kericho and several other places in Kenya working as Civil Servants before the Petitioner went to Australia for further studies at the end of 1995. While in Australia the Respondent, as a dependant of the Petitioner, joined the Petitioner in Australia to take some courses.

The Petitioner having completed her studies in 1997 came back to Kenya leaving the Respondent still going on with his courses in Australia. The Petitioner got re-employed in Kenya and she is now in the managerial category in the private sector.

From here onwards, in the proceedings, the Petitioner did not give me the impression that she was open in her story. But from what she said, I gather that while the Respondent was still in Australia, it came to his knowledge that there were opportunities for him doing business or being employed in Botswana. The Respondent therefore went to Botswana from Australia without coming to Kenya. It is apparent they were and have been communicating. But the Petitioner is unwilling to say much except production of Exhibit 7, a letter from the Respondent to the petitioner dated 9th November 2002.

That, in summary, is the evidence before me in this matter where the petitioner has petitioned for divorce on the grounds of desertion and cruelty. When I read the petition, I do not find the evidence before me supporting the allegations of desertion and cruelty in the petition. I do not see how desertion and or cruelty come just because married people stay a part or work in different countries. I do not see how cruelty comes just because a wife is assisting her husband as a dependant to get some studies. Look at prayer (d). If so, what desertion is there?

It is unfortunate the Respondent did not come to defend this cause. But I think I do not have sufficient evidence from which I can properly hold that this marriage is completely broken down to the extent of there being no possibility of it being salvaged.

That being the position, I do hereby dismiss prayers (a) and (d) in the petition.

I grant prayer (b).

I would have refused to grant prayer © since the petitioner is a well educated lady occupying a managerial position in the private sector where salaries are good and it is not mandatory that she sends their only child to a high cost primary school. But since it is indicated in exhibit 7 that the Respondent is anxious to make some payment, I do hereby grant prayers © and order that the Respondent do make a monthly payment of Ksh 15,000/= to the issue of the marriage I O L. There will be no order for costs of this petition.

Dated at Nairobi this 17th Day of January 2003.

J.M. KHAMONI

JUDGE