

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL SEPARATION CAUSE NO. 29 OF 2000

DAVID GETURO GATAMA PETITIONER

VERSUS

MARGARET NTHENYA GATAMA RESPONDENT

JUDGMENT

David Geturo Gatama and Margaret Nthenya Gatama were married on the 12th day of July 1997 at the St. Paul's Catholic University Chapel. On the 14th day of November, 1997 they had their son Phillip Geturo Gatama five months after the marriage was solemnized.

David Geturo Gatama, a male adult aged 35 years old in 1997 prayed that he be granted a Judicial Separation from his wife who was aged 34 years in 1997. He had described his occupation as a computer specialist but in fact is a businessman who travels within the East and South African region and is rarely in Kenya.

His main grounds for a judicial separation is that his wife had indeed become an embarrassment to him. She would shout at him in public and act in a most unbecoming manner to him. In cross - examination he admitted that indeed he did beat up the respondent. (His pleading stated that he never actually beat her but this was corrected whilst giving evidence.)

The respondent informed this court that her major problem with her husband was one of drink. He was a heavy alcoholic drinker and as such seem to be unable to behave correctly. She suspected he was with other women. His son would at times return to her hurt or in tears. She was not aware, until late, that he was with girlfriends whenever the son would visit him. To make it worse, he would often leave the country and her fear is that he may one day take the child away with him.

She tried saving her marriage which she did by taking him for counselling at the Amani Center. As this did not prove fruitful he left without giving it its intended try. He went only for two sessions.

The pleading for the petitioner show that the respondent suffered depression but this evidence did not clearly come out from the petitioner.

From the factual evidence before me I am satisfied that the two couples have differences which both have failed to work out adequately to an amicable conclusion. There is suspicion on both sides and mistrust between the two.

I would agree that a Judicial Separation be granted. I would award costs to the respondent of this cause.

The issue pending is that of maintenance to be heard after due compliance with the rules. The issue of access to the child I hereby order that custody be to the respondent mother. The reasons being that the child is of a tender age and that the petitioner is a frequent traveler and would not be able to be continually with the minor child.

The access to the child by the petitioner be reasonable. I would say that the child be allowed one full day in a given week between 8.00 a.m. to 5 p.m. with the petitioner.

Those are my orders.

Dated this 11th day of February, 2003 at Nairobi.

M.A. ANG'AWA

JUDGE