

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 45 OF 2002

R K W PETITIONER

VERSUS

J K WRESPONDENT

J U D G E M E N T

Ruth Njeri Kimachia petitioned the court to dissolve her marriage to Joseph Kimachia Wamwiri, on grounds of adultery, cruelty, desertion and neglect.

The 2 got married on 28th December, 1983 at the Attorney General's chambers in Nairobi. She produced the original marriage certificate as Ex.1.

The couple had two children as appears in para 3 of the petition. She produced their birth certificates as Ex.2. The couple lived at Kenyatta Hospital staff quarters, as she is a nurse, whilst the respondent is a businessman. The petitioner recalled that in March, 1989, the respondent left the matrimonial home to go and live with another woman. She sought an order for maintenance and separation in Resident Magistrate's Maintenance Cause No. 175 of 1999. She produced the order as Ex.3. The court ordered the respondent to pay Kshs.2,500/=p.m. which he paid only once, and stopped. The petitioner complained that before the respondent left her, he used to pick quarrels with her and also used to live away from home for weeks.

The couple never had a chance to discuss their problems because the respondent used to refuse to sit down and discuss. The petitioner has not condone or connived all the respondent's desertion etc. She also confirmed that this suit is not brought in collusion with the respondent, who was served with the petition, but refused and or failed to respond to it? The Registrar certified the cause as undefended. From the evidence I considered from the petitioner, I am satisfied that it is the respondent who deserted her, for no just cause.

I therefore grant an order dissolving the marriage between the respondent and the petitioner. I also grant custody of the children of the marriage to the petitioner, with reasonable access to the respondent, who is the natural father. However, this would have to be arranged if the respondent comes forward to ask for access.

Finally, I order the respondent to pay the costs occasioned by these proceedings.

Dated at Nairobi this 27th day of March, 2003.

JOYCE ALUOCH

JUDGE