

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
DIVORCE CAUSE NO. 69 OF 2002

NIHAL SHAH PETITIONER

VERSUS

BINISHA SHAHRESPONDENT

J U D G E M E N T

The petitioner Nihal Shah married the respondent Binisha Shah in Nairobi on 31st January, 1999, and the 2 lived together along Thika Road, Parklands Nairobi, till 11th November, 2000. The petitioner complained that the respondent was cruel to him. He cited several incidents, for example, on 15th March, 1999 when the respondent resigned from her job because of money she had not accounted for. He again referred to an incident on 25th October, 1999 when the respondent was arrested for shoplifting in England, where she had gone for a holiday.

He also cited incidents when the respondent wrote cheques for large amounts of money knowing very well that her account was either closed or there was no money in it.

In all those situations, the cheques were dishonored. In one incident on 9th November, 2000, the respondent once more wrote a big cheque, for equivalent of US dollars 30,000, when the account was closed. Police were called and she was arrested. The petitioner and his father had to pay the money back to the Travel Bureau.

The petitioner stated that his wife kept on telling lies about all these payments and when he confronted her. She screamed so loudly that he suffered emotionally by being depressed and embarrassed until he could not go to work for almost two weeks, and instead had to consult a Doctor.

Eventually on 11th November, 2000, the petitioner told his wife to go to her father and get money to refund him and his father. The respondent went and never returned immediately and when she did after about 5 months, it was only to collect her clothes and other personal belongings; otherwise, she did not resume cohabitation with him. The petitioner confirmed that she has not condoned or connived at the respondent's acts of cruelty. She asked the court to dissolve her marriage to the respondent.

Mr. Goswami, counsel for the petitioner produced the authority of STANWICK v STANWICK [1970] 3AER p.893 where it was held, inter alia,

“A persistent course of dishonesty by a spouse, resulting in criminal convictions, the commission of other criminal offences, and putting the other spouse in acutely embarrassing positions, is material on which a court may make a finding of cruelty and should do so if this conduct injures the other spouse health.....”

In fact, the court went a head and held,

“The wife had treated the husband with cruelty, and leaving in this way was in itself a cruel act.....”

The records in the court file show that on 9th day of May, 2002, the respondent, who was accompanied by her father, to the offices of Mr. Goswami, advocate for the petitioner, was served with a copy of the petition and all the relevant documents. She acknowledged service and signed to that effect, however, she did not file an answer and the Registrar certified the cause as undefended.

I believe the evidence of the petitioner, and from it, I find that the nature of the acts relied on by him show a “*persistent course of irresponsibility and dishonesty with regard to money matters*”.

This, in my view is sufficient to prove cruelty on the part of the respondent wife. I also believe the evidence that she was the one who left the matrimonial house. This amounted to desertion with no just cause.

I am satisfied that the petitioner has proved his case on a balance of probabilities, based on the grounds of cruelty and desertion.

I therefore proceed to dissolve the marriage between the petitioner and respondent.

I direct that the decree nisi should issue straight away today, and the same should be made absolute within a period of one month from today.

Dated at Nairobi this 13th day of March, 2003.

JOYCE ALUOCH

JUDGE