

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
DIVORCE CAUSE NO. 29 OF 1999

JIMMY IBRAHIM ASKAR PETITIONER

VERSUS

ANGELA STOLBERG RESPONDENT

JUDGMENT

The Petitioner brought the petition before the court on 21st September, 1999 and served the Respondent who filed a defence on 26th October, 1999. At the hearing however the Respondent failed to attend even after her counsel was granted a second chance. The Petitioner's evidence is therefore unchallenged.

It was his evidence that he married the Respondent on 18th November, 1996 at the Registrar of Marriages, Mombasa and the couple lived at Mkomani, Mombasa upto 2nd March,1998 when the Respondent deserted her matrimonial home. There is one issue of the marriage who from sometimes in the year 2002 lives with the Petitioner after the Respondent send the child to him. Trouble in the marriage began when the Respondent started going home late and drunk and this progressed to her leaving home for several days without having any regard of the young child. As a result the Petitioner took the child to the Respondent's mother for care as he was working and the child was of tender age. It was also in evidence that the Respondent was engaged in adulterous relationships and although she denies the same in her defence she does not deny having lived with the two persons namely Florenzo Costelleno and Harold Schmidebinger for many months at different times. The couple has been living separately since March, 1999 and the Respondent does not visit or correspond with the Petitioner. She has not even visited the child since the year 2002 when she send him to live with the Petitioner.

I have noted that an order for maintenance for the Respondent and child had been made in SRMCC No.1 of 1999. However it is clear from the Respondent's actions that she no longer wants to have custody of the child and I agree with the Petitioner that in the circumstances, the Respondent does not deserve any maintenance. In view of the findings I order as follows

- 1. The marriage between the Petitioner and Respondent is hereby dissolved and a Decree Nisi shall issue.**
- 2. The custody of the only child shall be to the Petitioner until further orders of the court if need be to the contrary.**
- 3. The order for maintenance is to be suspended for as long as the child lives with the Petitioner.**
- 4. Each party shall bear its costs.**

Dated and delivered this 30th day of May 2003.

P.M. TUTUI

COMMISSIONER OF ASSIZE

