



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 101 OF 2000

M N G PETITIONER

AND

I G M RESPONDENT

JUDGMENT

The Petitioner, M N G filed this petition praying for orders that:-

- (a) The marriage between her and her husband, the Respondent I G M, be dissolved;
- (b) The “Petitioner be granted Alimony and maintenance both pending after suit;”
- © The Petitioner be granted custody of Kevin Mwangi Gatungu, the child of The marriage;
- (d) The Respondent be ordered to maintain and Educate the said child until he attains the age Of eighteen (18) years;
- (e) The property acquired by the Respondent and The Petitioner during the existence of the Marriage be apportioned between the two For the benefit of their child and the petitioner.
- (f) This last is listed as prayer (h) in the amended Petition stating that the Second Respondent Be condemned to pay general damages.

The Second Respondent is J W.

The petition is based on the grounds of cruelty desertion and adultery.

In response, the First Respondent filed an answer which was together with his cross-petition in which he prays for orders that:-

- (a) The marriage between him and petitioner be dissolved
- (b) The Respondent be granted custody of the issue of The marriage namely Kevin Mwangi Gatungu.

The cross petition is based on the grounds of adultery, cruelty and desertion.

While the Respondent has defended himself and prosecuted his crosspetition, the second Respondent has not cared to defend herself

I am relying on the petitioner's case as stated in her amended petition dated 2nd February 2001 and filed on 6th February 2001 and the Respondent's case as stated in his amended answer to petition and cross petition dated 14th February 2001 and filed on 15th February 2001.

I have listened to and carefully considered the evidence adduced on both sides. It is my humble opinion that while the First Respondent has failed to prove adultery, cruelty and desertion against the Petitioner, the said petitioner has proved cruelty, desertion and adultery against the Respondent.

Acts of cruelty which the petitioner had been experiencing and tolerating were brought to a dramatic climax when after the First Respondent giving the petitioner permission, on the new year's eve 31st December 1996, to go and attend an over-night prayer (Keshu) for the new year, on returning home at about 6.00 a.m. to 7.00 a.m. on the new year day 1st January 1997 accompanied by her brother, her sister and her sister in law who had been with her from home the previous day until that time, the Respondent who alone was also returning home from where he had celebrated the coming of the new year, turned violent accusing the petitioner, without evidence from her relative companions, of coming from an adulterous mission and causing the petitioner to flee and hide in the bush for her safety. From that day, the two have never lived together again as husband and wife as they never reconciled, and since the petitioner is still fearing for her security, the First Respondent has been in constructive desertion.

Immediately after that incident, the 1st Respondent started living with the Second Respondent as husband and wife in the petitioner's matrimonial home at Thika and the two people already have a child from that union, although the First Respondent is not living with him. I stated earlier that the Second Respondent has not cared to come and defend herself.

In his defence as well as the prosecution of his cross petition, the First Respondent has relied on mere allegations without evidence to prove the allegations. He would mention names only to proceed to withdraw what he has said for failure to adduce relevant evidence in support of the allegations.

From what I am saying above therefore, the First Respondent's crosspetition be and is hereby dismissed in its entirety.

The petitioner's petition granted in terms of prayers (a), (c) and (d) only.

Prayers (b), (e) and (h) disallowed.

A decree nisi to issue and the same not to be made absolute until after the expiration of six months from the date of this judgment.

The Respondents jointly and severally to pay costs of these proceedings to the petitioner.

Dated, delivered and signed at Nairobi this 18th day of April 2002.

J.M. KHAMONI

JUDGE