

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

H.C. DIVORCE CAUSE NO. 10 OF 2001

N P G PETITIONER

V E R S U S

L K K..... RESPONDENT

J U D G M E N T

The spouses had filed the petition and cross-petition. However at the time of hearing only the wife gave evidence in support of her cross-petition.

In short she had alleged cruelty against the husband. She adduced the evidence in support of the particulars of cruelty enumerated in her crosspetition. She deponed that her husband started his acts of mental cruelty immediately after the marriage. He insulted her, called her an ugly woman and demeaned her in front of house helps, friends and relatives. He was negligent to support her financially, mentally and socially. She has been unable to bear his attitudes and cruelty. She had to leave the matrimonial home and be with her parents at least three times. The first of such incidence occurred in June, 1997 barely after three months of their marriage which was celebrated on 31st March, 1997. The last incidence happened on 23rd September, 1998 shortly after she came back from the hospital after the birth of their son. That incident can be summarized thus. She was breast feeding their son in the bedroom and the husband demanded her to go out and feed him as the act was disturbing him. When she said she was nursing, he grabbed her and twisted her hand and dragged her out of the room with the child still with her. She screamed in pain and started running with the husband chasing her threatening to beat her. She asked the maid to open her room and gave her the child. When she came out, she tried to plead with him. He thereafter locked her out of the house and after sometime the door was opened forcing her to spend a night with the maid in her room.

Next-day she left the house. The husband had admitted all the acts of cruelty in his letters to her and I need not reiterate those acts or the admissions.

It is a well established law that cruelty could be physical as well as mental. Whether those acts averred and deponed before the court amount to acts of cruelty in law is to be determined amongst other grounds as per the severity of the acts, their effects on the party against whom they were perpetrated etc. I do not and cannot intend to give the exhaustive lists of the factors relying on which this court can find a party guilty of cruelty under the matrimonial cases.

The parties of this cause are professional persons and the fact that the wife had to leave the matrimonial home many times point to the severity of the acts and effects thereof on her. Those acts are admitted by the husband and he has realized its effects on his wife.

In short, considering the evidence and circumstances of the case I am satisfied that the petitioner/husband was cruel to the Respondent/wife that the wife has not condoned those acts of cruelty and that the cross-petition was not filed in collusion with the petitioner.

The petitioner did not adduce any evidence and thus the petition is dismissed.

The result of the above finding is that the marriage in fact celebrated on 31st March, 2002 between the parties is dissolved. The Respondent did not press for the costs and none is thus awarded.

I shall also order that the consent order recorded on 16th May, 2002 on custody and maintenance of the child of the marriage namely W G be the order of the court.

The Decree nisi be made absolute after three months from today.

Dated and delivered at Nairobi this 30th day of May, 2002.

K. H. RAWAL

J U D G E.