



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
DIVORCE CAUSE NO. 213 OF 2000

C O APETITIONER

VERSUS

G A A..... RESPONDENT

J U D G E M E N T

The petitioner C O A and the respondent G A A got married in March, 1990, under the Luo Customary Law signified by payment of dowry, and on 22nd April, 1997, they had their marriage registered under the Marriage Act, at the Registrar General's office in Nairobi.

The couple had 3 children as appears in para 3 of the petition.

They lived and cohabited as husband and wife in the places shown in para 2 of the petition.

The complainant explained that his wife sells seafood, which she gets, from Lamu and Malindi. That she goes to high seas with fishermen and would normally stay away from home for two to three weeks or more. The petitioner complained that this search for seafood encourages promiscuity and his wife tells him that committing adultery is part of the business, as it cannot be controlled because of the long stay on high seas.

The petitioner recalled that on 10th December 1998, his wife the respondent brought a man home. She introduced him as a "supplier of sea foods", who had come to Nairobi yet he had nowhere to sleep.

The petitioner explained that he allowed the visitor to sleep in the sitting room for the night. The T.V was in that room and the respondent remained in the same room to watch the T.V.

She went to bedroom at about 11.00 p.m. and changed into her night slip, and returned to the sitting room, assuming that the petitioner was asleep, but he was not. He watched his wife's movements as she left the bedroom, closing the door slowly behind her.

After sometime he followed her into the sitting room. The light was off, but the TV was on so it provided light. He found his wife and the visitor making love on the sofa set. He watched them but did not attack them because he has a disabled left arm and could not therefore fight them, as they were both younger and stronger.

The petitioner went back to bed and was joined later by his wife. He did not ask her anything.

The following morning he left for South Nyanza and was away for one week. When he returned the "visitor" was no longer there. It was then that he questioned her about the "male visitor" and why she made love to him in the sitting room. The respondent confessed that the male visitor was "her lover and

boyfriend”.

The respondent moved out on 24th January 1998, she took the children with her but later returned them to the petitioner. She comes to visit them, once in a while, otherwise she is planning to leave Kenya and settle overseas, that is why she did not bother to contest the divorce.

The petitioner’s first marriage was in 1971, whilst still a student in USA. She got married in Kenya, and his wife joined him in the USA and he put her through school until she got her Ph.D degree. He had 3 daughters with her in the states.

The petitioner returned to Kenya in 1989, but his wife refused to come back. The 2 got divorced in the USA.

That first ex-wife returned to Kenya for the first time after many years, in December 2001. She brought the children back to see their father the petitioner, and again took them back to the states.

The petitioner prayed the court to dissolve his marriage to the respondent, as he can no longer live with her.

Listening to the petitioner’s evidence in court, I was satisfied that he neither condoned nor connived at his wife’s act of adultery committed right in his house, by a man brought to the house by his wife, the respondent. It was a shameful and deplorable act! No wonder the respondent did not file an answer to the petition.

I find that the petitioner has proved his case on a balance of probabilities. It is the respondent’s adulterous associations, which has caused the breakdown of the marriage. I therefore grant an order to dissolve the marriage between the petitioner and respondent. I also award the petitioner the custody of the 3 children of the marriage. I grant unlimited access to the respondent, as far as the children are concerned.

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

Dated at Nairobi this 19th day of September, 2002.

JOYCE ALUOCH

JUDGE