



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
DIVORCE CAUSE NO. 33 OF 2001

G N M PETITIONER

VERSUS

P M MRESPONDENT

J U D G E M E N T

G N M, petitioned the court for Divorce on the grounds of her husband's adultery whose particulars she gave in para 7 of the Petition for Divorce. However, the petitioner did not name the said women for purposes of having them served.

A Notice of the institution of the petition was served on the respondent, but he did not enter appearance or file a reply.

The petitioner and respondent got married on 8th September, 1994 at St. Stephen's Church, Jogoo Road Nairobi.

After the wedding, they lived and cohabited in the places shown in para 2 of the petition.

The couple had 4 children as shown in para 3 of the petition.

The petitioner alleged that her husband had a love affair with his niece who was living with them at the time.

The petitioner was annoyed because this was not the first time as in 1985, he had seduced and had sex with the petitioner's niece. The petitioner decided to return that particular niece back home and in 1987, she brought another niece and on 10th July, 1987, she caught her husband redhanded in a sexual act with the 15 year old in the same house, but in a different room where the niece was sleeping with her young children aged 2 and 4 years old.

Both the respondent and the 15 year old niece admitted the incident as they had been caught redhanded.

The petitioner and respondent made up after this last incident which happened as the family was living in South Africa.

The petitioner removed the niece from the house to a girls' boarding hostel, then she came to Kenya for business but whilst in Kenya she learnt that the respondent returned the niece back to the house, from the girls' boarding hostel, and continued having sex with her.

The petitioner decided not to go back to the respondent in South Africa and eventually filed this

Divorce Cause.

When the respondent was served with the Notice of Divorce petition, he wrote back to the petitioner asking her to send him the Divorce Certificate, once the Divorce goes through.

From the contents of that letter, the petitioner realized that the marriage was over. She prayed the court to dissolve her marriage to the respondent. She contended that it is the respondent's infidelity which has caused the breakdown of the marriage.

I find that the respondent's infidelity amounted to cruelty as the respondent persistently committed adultery with the petitioner's relatives who came to live with the family.

I do not find that the petitioner connived at or condoned the respondent's cruelty.

I am satisfied that the marriage between the petitioner and respondent has broken down and I hereby proceed to grant an order dissolving the marriage between the petitioner and respondent. I also grant the petitioner unlimited access to the children of the marriage.

I direct that the decree nisi do issue straightaway today, 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

HIGH COURT JUDGE