

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO.108 OF 1997

R T M..... PLAINTIFF

VERSUS

P M M DEFENDANT

J U D G M E N T

The Petitioners R T M filed this petition for divorce, which petition was on cruelty but the petition was dismissed. The Respondent had filed an answer to the petition as well as crosspetition.

The cross-petition is based on cruelty and desertion. The Respondent in his evidence in cross petition testified that petitioner had committed acts of cruelty against him. She was cruel some, she used to desert the matrimonial home frequently and went to unknown places. She deserted him and become extremely negative. Her absence from home made him feel abandoned lonely and rejected. She is abusive and calls him names. She despised him and insulted him and his family, and lastly she deserted the matrimonial home since 1994 and she has never come back, which is now 8 years. He made efforts to reconcile but to no avail. The marriage has irretrievably broken down. On the issue of one child of the marriage the Respondent has her custody and she is able to look after her. There were no incidents of actual violence in respect of the alleged incidents of cruelty. The alleged cruelty consists not of violent acts, but of injurious reproaches complaints and taunts.

It is a grave matrimonial offence to set out on a course of conduct with the deliberate intention of wounding and humiliating the other spouse and making that other spouse's life a burden, and to continue in that course of conduct in the knowledge that it is seriously affecting that spouse's mental and physical health.

But acts due to circumstances of the moment that cause no real danger to life health or even future happiness of the wife or husband are not sufficient enough to prove cruelty.

In the present cross-petition I am satisfied that the crosspetitioner/ Respondent has proved acts of cruelty against him by the Respondent petitioner as well as desertion. It follows therefore that the cross-petition succeeds and the marriage between the cross-petitioner and the Respondent, which was solemnized on 27th December, 1991 is ordered dissolved. Decree nisi to issue and decree absolute to follow within 3 months hereafter.

Dated and delivered at Nairobi this 17th day of May 2001

J.L.A. OSIEMO

JUDGE