

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 36 OF 2000

S K M PETITIONER

VERSUS

J WRESPONDENT

J U D G E M E N T

S K M petitioned this court for an order to dissolve his marriage to J W , the respondent whom he married on 7th August, 1993 in Murang'a District in Kenya. The petitioner was a gospel singer and his wife was a teacher. Now she is a businesswoman. The couple has 2 children aged 5 and 2½ years old respectively. The respondent has the custody of the children of the marriage.

The petitioner testified that on 25.2.2000, the respondent chased him from the matrimonial home, calling him names and claiming that he was a prostitute and a man who cannot sustain himself.

The petitioner is still a gospel singer stationed in the city centre. He also has a shop, which he uses to display and promote his music.

The petitioner claimed that their marriage was peaceful for only one year, and thereafter, the respondent started absenting herself from home and also spending nights out without his permission. He also stated that the respondent became so abusive that it was not possible for the two of them to live peacefully. He told the court that he suffered mental torture as a result of the respondent's behavior.

The respondent was given notice of the institution of this petition. However she did not file any answer and the registrar gave a certificate for the cause to be heard as an undefended cause. The petitioner prayed that his marriage to the respondent be dissolved.

From the evidence I heard from him, I am satisfied that he proved on a balance of probabilities that the respondent was cruel to him by her acts of absenting herself from home on numerous occasions and her abuses to the petitioner even when he was at his place of work – i.e in the city centre singing. I therefore make an order dissolving the marriage between the petitioner and respondent.

The petitioner asked for the custody of the 2 children, but I am not satisfied that he gave evidence to show where he lives or how he intends to look after and bring up the 2 children. For now, I will only give him unlimited access to see the children. I will not give him custody until I get further evidence of his circumstances. I also direct that the petitioner pays his own costs occasioned by this Divorce Petition.

Dated at Nairobi this 18th day of June, 2001.

JOYCE ALUOCH

PIUSNE JUDGE