

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

DIVORCE CAUSE NO. 42 OF 2000

H M L.....PETITIONER

W E E..... RESPONDENT

JUDGEMENT

On 25th July 1997 H M L then a 22 year-old spinster solemnized a monogamous marriage before the Registrar of marriages in Mombasa with W E E than a 37 year-old Divorcee and were issued with a marriage certificate. For three years they cohabited in various places in Mtwapa and Nyali had no issue of the marriage.

The marriage was soon on the rocks as according to HML, she discovered that WEE was a man of violent disposition and ungoverned and vindictive temper. He stopped maintaining her and she under-went deprivation and hardship. He abused and mistreated her in his drunken bouts and broke household furniture. In his drinking sprees he would spend nights out in places unknown to HML and commit adultery. She was then kicked out of the matrimonial home.

So Harriet came to court on 1st November, 2000 and petitioned the court on grounds of cruelty and adultery. The petition was served on WEE and he acknowledged service on 8th November, 2000. No answer to the petition was filed before Harriet sought the Registrar's Certificate on 26th January, 2001. The Certificate was issued on 9th March, 2001 in the absence of WEE who was served but failed to attend court. Instead he placed on record a purported "Answer to Petition" on 8th March 2001 but failed to serve it on HML or her Advocates on record. As it was filed out of time and was not served within the time prescribed I made an order that the hearing of the petition shall proceed in his absence.

I heard HML on the allegations made in the Petition. She reiterated on oath that she was chased out of the matrimonial home after being subjected to acts of cruelty by the Respondent. He would go drinking and stay away all night. She discovered that he had had a child with another woman during the currency of their marriage. She never condoned those acts and has not colluded with the Respondent to file this Petition.

I have considered the averment made and the evidence tendered on oath. In the absence of any controverting evidence I have no reason to disbelieve the Petitioner. On account of the acts of cruelty and adultery, I find that the marriage is irretrievably broken down. I would grant the order sought for divorce and I now do so. A decree Nisi shall issue forthwith dissolving the marriage solemnized between WEE and HML in Mombasa on 25th July, 1997. The Respondent shall bear the costs of the Petition.

Dated this 12th July day of 2001 .

P. N. WAKI

JUDGE