



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
DIVORCE CAUSE NO. 43 OF 2000

L W M..... PETITIONER

=VERSUS=

K D M.....RESPONDENT

JUDGMENT OF COURT

The Petitioner seeks a dissolution of their marriage which was solemnized on 5.12.87 under the African Christian Marriage and Divorce Act (Cap.151).

The Petition is dated 21st August, 2000 and was filed in this court on 1st September, 2000. To it is attached a certificate of marriage and an affidavit in support of the Petition sworn by the Petitioner. The above documents together with a Notice to appear were served upon the Respondent on 21.11.2000. A Memorandum of Appearance was in response filed on 25.1.2001 on behalf of the Respondent by M.L. Alwenya & Company, Advocates. The latter were expected to file an Answer to the Petition within the prescribed time as provided in the law. They however did not do so, probably on instructions by the Respondent.

M/s Kiarie Kariuki & Company, Advocates issued and served a Notice to Produce upon M.L. Alwenya & Co., to produce the original certificate of marriage during the hearing. They also issued and served a Hearing Notice to them for 10.12.2001. During the hearing day aforementioned both counsel for both parties were present in court when Mr. Njoroge for the Petitioner prosecuted the case. He called only one witness, the Petitioner who testified under oath that she got married to the Respondent on 5.12.87 at Changamwe, Mombasa, where also the marriage was consummated and both parties resided. In June 1990, the couple's house was distressed for rent by Mombasa Municipality because the parties could not pay rents which until then was being paid by the Petitioner since the Respondent was due to his own negligence, indolence and pecuniary embarrassment unable to pay. Petitioner said that she was under obligation to pay monthly sums to Respondent's employer to salvage him from being dismissed from employment after embezzling employer's funds during the course of his employment. They were finally thrown out of the house and each moved to each one's parent thus causing a physical separation between them.

As it turned out later, above became the end of their cohabitation as husband and wife to the time when Petitioner gave evidence in proof this matter. The Petitioner gave evidence that in 1997 she got information that Respondent may have soon after separation in 1990 gotten married to another woman in accordance with customary rites and that the Respondent and the new wife now have three children of the second marriage.

In 1989, the Petitioner further testified, she got injured during the course of her employment, but the Respondent never came to see her nor send her condolences, despite the fact that she ended in hospital for several weeks. The Respondent had failed to call her to join him in his new home and her attempts to join him at his parent's home led to serious quarrels against them by him as a result of which the desertion became permanent.

Parents had tried reconciliation but such had completely failed. The marriage, she claimed, had completely failed and cannot be retrieved. She prayed for a divorce on the grounds of –

- a) Adultery of the Respondent in marrying a second wife.*
- b) Respondent's actual and constructive desertion.*
- c) The irretrievability of the marriage which had completely broken down.*
- d) The Respondent's cruelty to her for failing to maintain her, and failing to see her when she got injured and needed him.*

I have considered the evidence on record. Petitioner has proven the celebration of marriage and the breaking down of the same. She exhibited the certificate of marriage. The evidence aforementioned was given in the presence of Mr. Omollo for the Respondent who chose not to challenge it. The evidence is therefore proved beyond a reasonable doubt. There is no evidence of collusion between the parties. There is no evidence of the couple having sired any children from the marriage. Nor does the Petitioner seek any other relief except the dissolution of the marriage.

This court on the evidence on record holds that the marriage has irretrievably broken down. The Petitioner has proved the grounds upon which the dissolution is sought. Accordingly the marriage between the Petitioner and Respondent is hereby ordered dissolved.

ORDER

- a) The marriage between the parties herein is ordered dissolved and the decree nisi shall issue forthwith.
- b) Costs of this cause are ordered in favour of the Petitioner.

Dated and delivered at Mombasa on the 6th day of February, 2000.

D.A. ONYANCHA

J U D G E

Njoroge for Petitioner.

Nyaga for Alwenya for Respondent.