

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUNGOMA

DIVORCE CAUSE NO. 1 OF 2011

EWK.....PETITIONER

VERSUS

JTM.....RESPONDENT

JUDGMENT

The Petitioner EWK and Respondent TM married on 1st August 1992 at the Jehova Witness Kingdom Hall Kitale under the African Christian Marriage Act. They were blessed with five surviving children F (born in 1993) N (1995) P (1997) H (1999) and S (born in 2001). The Petitioner avers that the marriage blitz was disrupted by the Respondent treating the Petitioner with utmost cruelty. The particulars of cruelty are that he failed to provide maintenance, emotional and verbal abuse; physical assault, failing to exhibit love and affection to the Petitioner and the children. The Respondent during the subsistence of the marriage engaged in extra – marital affairs with various women, causing the Petitioner be arrested by police on flimsy grounds and chasing away the Petitioner from the matrimonial home. She therefore prays for dissolution of the marriage, be granted custody of the children, be paid alimony and the Respondent be condemned to pay costs of the Petition.

Upon being served with notice to appear, the Respondent JTM filed a Reply to Petition. In his answer to Petition the Respondent averred that the Petitioner during the subsistence of the marriage has been disrespectful to him, been deserting the matrimonial home and engaged in adultery. He denied ever chasing away the Petitioner and avers that the Petitioner’s character and behavior is such that she cannot be entrusted with the responsibility of bringing up the children. The Respondent then filed cross – petition seeking for dissolution of the marriage for the above grounds and be granted custody of the children.

The Petitioner in her evidence testified that during the subsistence of the marriage the Respondent used to assault her in particular on 28.12.2010 he beat her and she sustained injuries and was treated at Bungoma District Hospital. On 18.2.2011 he chased her from the matrimonial home. On 28.12.2010 he came with a woman to the matrimonial home and asked her to leave the bedroom for them which she refused and he beat her.

The Respondent testified that they had 5 issues of the marriage two of who are working and Purity and Sarah are below 18 years. He denied treating the Petitioner with cruelty. He testified that it is actually the Petitioner who is a cruel person. she has treated him with cruelty and is even cruel to he workers which led to her arrested by police. He testified that she deserted the matrimonial home. He testified that he Petitioner ha been engaging in adultery and gave an incident on 31.12.2010 when he together with police officers found her in a house with a young man. He testified that the Petitioner drinks changaa and engages in illicit sexual behavior. He prays that the court do dissolve the marriage.

From the evidence it has been established that the Petitioner and Respondent married under the African Christian Marriage Act. Both the Petitioner and Respondent are Civil Servants working with the Ministry of Interior and Coordination of National Government. They have 5 issues of the marriage. It is common ground from both the Petitioners’ and Respondents’ evidence that the marriage blitz has ceased to exist in their relationship. The reason for this is allegation of cruelty and adultery from both sides.

A marriage under the African Christian Marriage Act can be dissolved on grounds of; (a) Cruelty (b) desertion (c) Adultery (d) or that the marriage relationship has broken down irretrievably. In this Petition there is evidence of cruelty on the part of the Respondent who beat up the Petitioner in 2011 that she had to seek treatment, adultery by the Petitioner who was arrested by police while engaging in acts of adultery on 31.12.2010 and she deserted the matrimonial home in 2010.

From this evidence this Court is satisfied that the Marriage relationship between the Petitioner and Respondent has irretrievably broken down and should and is hereby dissolved.

On the issue of custody of children I note that two of the children FW and NN are adults and working. HM was born in 1999 and is therefore over 19 years old and SW was born in 2001 and will be 18 years old in August this year. I also note that Court made provisions for the parties by order dated 1st July 2016 in respect to Matrimonial property. I therefore find that the children are now adults who do not require order of custody and this court makes no order as to custody.

Each party to bear his/her own costs.

Dated and Signed at Bungoma this 11th day of February, 2019.

S.N. RIECHI

JUDGE.