



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

Divorce Cause No. 92 Of 2010

S A G.....PETITIONER

VERSUS

B N O.....RESPONDENT

JUDGEMENT

1. Marriage was celebrated between the parties herein on 17th May 1996 at the Office of the Registrar of Marriages, Nairobi. A certificate of marriage serial number [*particulars withheld*] was issued to them in accordance with the Marriage Act, Cap 150, Laws of Kenya (now repealed). It is not pleaded where the parties cohabited after the ceremony, but the couple was blessed with issue, two children – O O A (born in 1995) and A O (born in 1998).
2. It is pleaded that since the celebration of the marriage the respondent has committed adultery and bigamy, and treated the petitioner with cruelty.
3. On the alleged adultery and bigamy, it is pleaded that the respondent has been living with another woman called R, claiming to have married her, and the couple have a daughter called C N O. On the alleged cruelty, it is averred that the respondent installed another woman into the matrimonial home in the presence of the petitioner and her children, denying fatherhood to the children of the marriage, chasing the petitioner from his home in the United Kingdom, threatening to evict the petitioner from the matrimonial home and refusing to respond to the petitioner's communications.
4. The petitioner pleads that, on account of the cruelty and adultery pleaded, that the marriage be dissolved, the respondent be restrained from harassing the petitioner, custody and maintenance and costs of the suit.
5. Upon being served with the papers the respondent entered appearance on 25th August 2010. .
6. On 10th March 2011, the Deputy Registrar cleared the petition to proceed as defended even though an answer and cross-petition had not been filed.
7. The Petitioner testified on 1st September 2016. Her testimony gave vent to the allegations made in her petition. She added after the celebration of the marriage the parties cohabited at Buru Buru for some months before the respondent went to work abroad, leaving her in Kenya. He never came back to her; instead he came back to Kenya to introduce his new family to his extended family. The petitioner stated that the respondent's wife in the United Kingdom is called C D, and he has two children with her. She

accused the respondent of failing to maintain her and the children, and stated that she was seeking maintenance for the children. She stated that she knew that the petitioner was married, although she had no documents to support that assertion.

8. Although there is a prayer for maintenance it is not pleaded whether the maintenance sought is of the children or of the petitioner or both. At the hearing the petitioner said she did not want to be maintained by the respondent, but she wanted orders for maintenance of the children. Curiously, she laid no material before the court which could assist this court exercise discretion and order maintenance for the children.

9. From the material placed before me it is plain that the marital relationship between the petitioner and the respondent has totally broken down. I am satisfied that the respondent has been cruel to the petitioner and has committed adultery. There was however insufficient evidence to support the claim that there was bigamy committed by him. I have noted that the parties have been apart since 1996. The marriage no doubt has practically come to an end.

10. In the circumstances, I am moved to make the following final orders:-

(a) That the marriage between the petitioner and the respondent, celebrated on 17th May 1996, is hereby dissolved;

(b) That decree *nisi* shall issue forthwith, to be made absolute within thirty (30) days;

(c) That issues touching on the maintenance of the children of the marriage to be pursued through the Children's Court; and

(d) That there shall be no order as to costs.

DATED, SIGNED and DELIVERED at NAIROBI this 10TH DAY OF FEBRUARY, 2017.

W. MUSYOKA

JUDGE