



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

DIVORCE CAUSE NO. 12 OF 2013

F W N M.....PETITIONER

VERSUS

S M MRESPONDENT

JUDGEMENT

1. In the divorce petition dated 22nd January 2015 and filed in court on 22nd January 2013, the petitioner prays for the dissolution of the marriage celebrated between her and the respondent legal custody care and control of the issues of the marriage, and her maintenance and that of the issues of the marriage by the petitioner.

2. The petition is premised on cruelty, particulars of which are contained in paragraphs 7 and 8 of the petition. They range from verbal abuse, aloofness, ungovernable temper, negativity, lack of concern for the marriage, being locked out of the family home with the children, disconnecting electricity forcing the petitioner and the children to live in darkness, confiscating post office keys and thereby denying the petitioner communication with the outside world, coercing the petitioner to take out loans against her will, vetting all the visitors who come to the matrimonial home, to physical violence and abuse. The petitioner pleads that the said marriage has irretrievably broken down on account of the respondent's cruelty.

3. Although the Deputy Registrar certified on 25th April 2013 that the pleadings were in order and cleared the matter to proceed as a defended cause, I have not seen any evidence on record of the service of the pleadings on the respondent, neither is there a record of any pleadings filed by the respondent. It is not clear to me in what respect the cause is described as defended. However, when the matter came up for hearing on 12th February 2015, the respondent was represented by counsel, who did not raise issue as to the service of the petition and who proceeded to cross-examine the petitioner.

4. The petitioner testified on 12th February 2015, and was cross-examined. She gave vent to the allegations made in the petition. She narrated in detail the ill-treatment to which she was subjected to by the respondent during the course of their marriage. Other than being confronted by counsel for the respondent in cross-examination, her evidence was not controverted in any way, for there was no counter pleading by the respondent, neither did he testify at the trial.

5. In a case of this nature, the court looks at the conduct of the respondent with regard to the allegation of cruelty. In view of the testimony given by the petitioner and the circumstances emerging from the

pleadings, I find that the conduct of the respondent herein is so grave and weighty to the extent of it falling within the description of what the law calls cruel.

6. In *Meme vs. Meme* (1976-80) KLR 17, it was held that to establish cruelty, the petitioner must show to the satisfaction of the court that there was *misconduct of a grave and weighty nature, real injury to the complainant's health or reasonable apprehension of such injury, that the injury was caused by misconduct on the part of the respondent, and that on the whole the evidence of the conduct amounted to cruelty in the ordinary sense of that word.*

7. In *JSM vs. ENB* (2015) eKLR the court stated that –

“The last point, which has been made time and again by various courts, and which is worthy reiterating here, is that there is no comprehensive definition of cruelty. Each petition founded on cruelty must be decided on its own facts because whether cruelty is proved or not is a question of fact and degree. The conduct complained of must be looked at holistically and in the light of the parties themselves.”

8. In light of the foregoing, I find the respondent's conduct as shown by the petitioner amounts to cruelty. Accordingly, the petitioner has made out a case for dissolution of the said marriage on the ground of cruelty.

9. Although there is prayer for maintenance of both the petitioner and the children, I note that the petitioner did not lead any evidence on the same. She did not state her needs and those of the children; neither did she give any indication of her income and that of the respondent. There is therefore no basis upon which I can make any orders on maintenance of both the petitioner and the children.

10. Consequently, I hereby –

(a) pronounce a decree of divorce, and order and declare that the marriage solemnized on 18th July 1997 at Nairobi District between S M M and F W N be and is hereby dissolved;

(b) order that decree nisi issues forthwith, to be made absolute after expiry of a period of thirty (30) days from the date hereof;

(c) grant the legal custody care and control of the issues of the marriage to the petitioner, with liberty to move the Children's Court on any matter or issue concerning the said children; and

(d) make no orders as to costs.

DATED, SIGNED and DELIVERED at NAIROBI this 2ND DAY OF OCTOBER, 2015.

W. MUSYOKA

JUDGE