



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT GARISSA
DIVORCE CASE NO. 2 OF 2015

G. F. W.....PETITIONER

VERSUS

Y. M. G..... RESPONDENT

JUDGMENT

The petitioner filed a petition on 17th March 2015 alleging cruelty and adultery against the respondent. Particulars of cruelty and adultery were given in the petition. The petitioners asked for dissolution of the marriage with the respondent and any other relief.

The respondent was served with a Notice to Appear on 18th March 2015 but never entered appearance. The Deputy Registrar of this court thus ordered that the matter do proceed to hearing as an undefended petition.

Today when the matter came for hearing before me, both petitioner and respondent were present in court.

In her testimony, the petitioner stated on oath that since her marriage with the respondent, their marriage had not been a happy one as the respondent had been abusing her and saying the children were not his. He had also committed adultery and infact was already married to another wife. She stated that their marital problems had made them go to the police a number of times, and that the marriage had irretrievably broken down and wanted it dissolved.

She also stated that she would take care of the children as she knew that the respondent would not be willing to provide for them. She stated however that the respondent should be free to visit the three (3) children.

The respondent elected not to cross – examine the petitioner, and the petitioner closed her case.

When given the chance by the court to give his own side of the matter, the respondent stated on oath that he did not have anything to say in opposition to what the petitioner had said. He stated that the petitioner had a good business, and that he merely wanted to be free to live his life, as he already had another wife.

This is a petition for dissolution of a marriage.

Indeed, the petitioner and the respondent are married. They were married under the Marriage Act (Cap. 150) on 21/10/09 in Nairobi by converting their customary marriage to a statute marriage. The marriage between them resulted in birth of three (3) children.

From the evidence tendered by the petitioner, which was not contested by the respondent, the marriage has irretrievably broken down. The petitioner and the respondent are no longer cohabiting. The respondent is living with another woman and in my view this marriage cannot be salvaged as the respondent wishes to so continue. He admitted that he was already living with another woman and wanted freedom to continue doing so. I will thus dissolve the marriage.

With regard to the children, no prayer for custody has been sought. However, in evidence the petitioner said that she was able to take care of the three children, and that the respondent should be free to visit the said children. The respondent has no objection to the petitioner being with the children and has added that the petitioner owned a business which could provide for the said children.

In the best interests of the children, therefore, whom I have had the opportunity to see in court as children of tender years, I will grant custody of the 3 children to the petitioner. The respondent will have a right of access to the children.

Consequently, and for the above reasons, I allow the petition and order as follows:-

1. The marriage between the petitioner and the respondent herein be and is hereby dissolved. A decree nisi for divorce to issue, which will be made absolute after the lapse of six (6) months.
2. The custody of the three (3) children is hereby granted to the petitioner. The respondent will however have a right of access to the children at such times as will be agreed by the parties.
3. As the petition herein was basically not defended, each party will bear their respective costs of the proceedings.

It is so ordered.

Dated and delivered at Garissa this 12th day of October, 2015

GEORGE DULU

JUDGE