



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
DIVORCE CASE NO. 4 OF 2012

Z M M.....PETITIONER

VERSUS

J G M.....RESPONDENT

JUDGMENT

1. The divorce petition herein is brought by one **Z M M** against his wife, **J G M** the respondent in this petition. The petition itself is dated 25th May, 2012 and was duly filed on 28th May, 2012 at High Court of Kenya, Kisii.

2. The respondent appointed counsel, M/s Nyakundi & co. Advocate filed her answer to the petition hereof. By affidavit of service dated 25th June, 2014, a hearing notice dated 2nd May, 2014 was duly served upon counsel for the respondent M/s Nyakundi & Company Advocates, in Nairobi. However, on the hearing day, the advocate was not in court and the matter had to proceed without her representation. However, on the 18th September, 2014, the petitioner appointed M/s S.O. Omwega to replace M/s Nyabuti & Co. Advocate.

3. In his testimony, **Z M M** states that he married the respondent under Ekegusii customary law and were blessed with four children:

i. E B M

ii. A K M

iii. C M M

iv. J M M

4. Both lived at Magena in Kisii and later at Masimba rural health. However, in 1989, the petitioner was transferred to Kenyatta National Hospital. The petitioner who worked as a clerk, was living at Kenyatta National Hospital quarters in Nairobi. Whilst in Nairobi she procured an employment for his wife, as a clerk in supplies department of the hospital, Kenyatta National Hospital.

5. In 2001, the petitioner moved to the United States, North Carolina. In 2005 he took all his children to the United States. They all live here with him except one **A K M** who has since been deported back to Kenya for unbehaviour.

6. The petitioner says in 2008 when he came back to visit his wife, he found ten(10) condoms in her

handbag. Further, earlier when he sent money, 250USD to his wife to give to his J K. When K visited my wife's house early in the morning, he found one Kithaka- a stranger, in the house. This person who had wrapped a towel around his waist from the bathroom, going to the bedroom. He said he knew one Kithaka when he worked at Kenya National Hospital. When my brother asked J G what Mr. Kithaka was doing in the house. She denied that he was in the house.

7. On finding condoms, the petitioner asked his wife about what she had there(condoms) on her bag. She simply kept quiet. That night, the respondent did not come to the bedroom, she slept on the sofa-set and the petitioner slept, alone in the bedroom. The following day, the petitioner went to Siokimau, where he was building a house, when he returned to Kenyatta National Hospital quarters, the house was locked against him. She even refused to give the key to my brother when I send him to get the house key.

8. The petitioner made several efforts to get people to talk to her to reconcile the marriage. She refused to co-operate. The marriage, in his view, has failed. I ask the court to dissolve the said marriage and grant a divorce to the petitioner.

9. PW2, the petitioner's brother, J K, corroborated the petitioner's evidence. He sighted J G and Kithaka kissing at Wollmatt Store in down town Nairobi, he also found Kithaka, wrapped in a towel, early in the morning, from bathroom to the bedroom, a sign of somebody who slept there.

10. The marriage, in my view, has ceased to exist since 2008 to date- six(6) years down the line. It is interesting to note at this juncture that amongst the list of documents, there is a forged certificate of divorce, presumably by the respondent.

11. The petitioner therefore has suffered cruelty, more particularly, emotional torture, public ridicule, humiliation and odium. The marriage has irretrievably broken down. The petitioner has neither connived at nor condoned the respondent's cruelty and desertion.

12. Therefore the court finds that the petitioner has proved his case adequately. In this regard the petition dated 25th day of May, 2012 is hereby allowed, accordingly this court grants the petitioner herein a divorce, the decree nisi to issue pending the statutory period before the decree absolute to follow.

13. It is so ordered.

Dated and Delivered at Kisii this 14th day of November, 2014

C.B. NAGILLAH,

JUDGE.

In the presence of:

Magara holding brief for Omwega for the petitioner/applicant

G.M. Nyambati & Co. not in court for the respondent

Edwin Mongare Court Clerk.