



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
DIVORCE CAUSE 169 OF 2011

SR..... PETITIONER

VERSUS

DR RESPONDENT

JUDGMENT

By a Petition dated and filed in court on 25th October, 2011, the Petitioner seeks the following orders from the court-

- 1. *The Dissolution of the marriage whereby a Decree nisi be issued and thereafter be made absolute.***
- 2. *The Deed of Settlement signed by the parties on the 23rd day of October, 2011 be made an order of this honourable court.***
- 3. *Costs of the Petition be awarded to the Petitioner.***

Although the Respondent was duly served with a certified copy of the petition filed in court together with a copy of the marriage certificate, affidavit, and summons to enter appearance, he neither entered appearance, nor did he file any documents. Consequently the petitioner proceeded *ex parte* and the Petition was undefended.

According to the pleadings set out in the petition, the only ground upon which it is based is that since the celebration of the marriage, the Respondent has treated the Petitioner with cruelty. The particulars of cruelty are that the Respondent has failed to be a companion to the Petitioner; is

insensitive to the Petitioner’s needs; has failed to communicate with the Petitioner; has failed to show love and affection to the Petitioner; and that the marriage has irretrievably broken down. As a result of the Respondent’s conduct as aforesaid, the Petitioner has suffered and continued to suffer mental anguish.

At the hearing of the Petition, the Petitioner gave sworn, oral evidence. She gave an account of how the parties have resided in Kenya, got married, and that they have one child born on 15th June, 2006. She produced a copy of their marriage certificate which shows that the marriage took place on 5th June, 2004. The couple then cohabited in Kisumu and at various other places in Nairobi. As a result of the grounds set out in the foregoing paragraph, and particularly on the basis of the alleged cruelty, the

marriage has irretrievably broken down and the Petitioner continues to suffer mental anguish. She contends that she has not condoned the cruelty and has not presented this petition in collusion with the Respondent. She then produced a copy of a deed of settlement in respect of their financial matters and requested the court to grant a decree nisi. She also requested the court to adopt the deed of settlement as an order of the court in respect of the child.

After considering the pleadings and the oral evidence adduced by the Petitioner on oath, I find that the Petitioner is a witness of truth and that the evidence she adduced in court was truthful. I further note that the Respondent neither entered appearance, nor did he file an answer to the Petition. Going by the grounds of cruelty set out in the Petition, I am satisfied that the Respondent's conduct has subjected the Petitioner to such anguish as constitutes mental cruelty. She has therefore proved her case and is entitled to the orders sought. I accordingly make the following orders-

- (a) *The marriage solemnized at the Registrar of Marriages Office in Kisumu between the parties on 5th June, 2004 be and is hereby dissolved***
- (b) *Decree nisi to issue.***
- (c) *Decree nisi to become absolute after two (2) months upon application by either party.***
- (d) *The Deed of Settlement signed by the parties on 23rd October, 2011 be and is hereby adopted as an order of the court in respect of the child.***
- (e) *The Respondent will bear the costs of this Petition.***

DATE and DELIVERED at NAIROBI this 12th day of July. 2012

**L. NJAGI
JUDGE**