



REPUBLIC OF KENYA

High Court at Nyeri

Divorce Cause 6 of 2010

R.W. K.....PETITIONER

versus

S.W. A.....RESPONDENT

JUDGMENT

The petitioner R.W.K. filed this petition on 2nd December 2010 seeking the dissolution of the marriage between himself and S.W.A. celebrated on [particulars withheld] at the office of the Registrar of Marriages at Sheria House Nairobi. The Petitioner avers that the said marriage has irretrievably broken down due to the fact that since the celebration of the said marriage the respondent has treated the petitioner with cruelty and subjected the same to financial and psychological torture the particulars of which is given in paragraph 5 of the petition herein.

The Respondent entered appearance through the firm of WAWERU MACHARIA & co. ADVOCATES on 1st February 2011 but did not file a reply to the petition.

On 11th July 2011 the respondent advocate through an application dated 8th March 2011 was allowed to cease acting for the same and directions having been granted that the petitioner proceed as undefended the same proceeded before me on 14th March 2012 when the petitioner testified that before he married the Respondent he was married to an American with whom they had two children. That he got married to the petitioner on [particulars withheld] at the registrars office Nairobi and that the Respondent kept the copy of the marriage certificate. He testified that the respondent calls herself S.W.A. and did not take on his name after the marriage. He testified that an issue was born out of the said marriage on 28th October 2008 but because he has been away for so long he had doubt about the paternity of the same.

He testified that two months after the marriage the respondent started to treat him with cruelty. The first instance was in November 2006 when she had him buy a motor vehicle from people known to her one of whom she claimed was her uncle but never gave him any documents in return thereof. Then she later went to court claiming ownership of the said motor vehicle.

He further testified that the respondent in January 2009 secretly withdrew Ksh.100,000/- from his bank account without any reason while he was in the process of building a family house causing him financial difficulties.

In the same month of January 2007 she called a European tourist whose travel to Kenya that petitioner had organized and threatened her to stop interfering with her marriage thereby embarrassing the petitioner.

In Feb 2009 the Respondent took the petitioner to court secretly and stated that he could not be found to be served with court papers which case she delayed upto 31st October 2011.

In 2008 the respondent moved into the petitioners unfinished house in Ring road Nyeri thereby bringing the work to a stop. In November 2008 the petitioner suggested that they sell the house since they had an upcountry house but the Respondent refused and put a caution on the said plot.

He further testified that on 31st October 2011 he entered in the matrimonial home of Ring road together with some members of his family only to be confronted by a group of people who ordered them to leave immediately. At that time the respondent was armed with a panga confronted the petitioner personally while his female friend insulted and jeered and taunted the same.

He testified that since April 2008 they have lived apart and have not spoken to one another.

It should be noted that the respondent chose not to defend the petition.

I have therefore considered the evidence tendered by the petitioner his written submission and the pleadings and it is clear to me that the petitioner and the respondent cannot live together. It is also clear that they cannot be reconciled and that this marriage has broken down save for the marriage certificate herein. The petitioner and the respondent have been in and out of court pursuing one case or another. There seems to be a deep mistrust between the petitioner and the respondent and since the terms of communication between the two seems to have broken down there is no need to hold onto a marriage which is technically dead.

I therefore grant the petition of divorce and declare that the marriage solemnized on [particulars withheld] at the Registrars of marriages office Sheria house between the petitioner and the respondent is hereby dissolved. Decree nisi is hereby issued granting the said petition of divorce which shall be made absolute after the expiry of three months. It is high time our legislators look at the marriage laws in Kenya to make it easy for unopposed petition of divorce to be granted without subjecting the parties to full trial as present in our court. It would be of interest to this court should there be a provision for divorce by consent without making the parties to expose their past to all and everybody who reads their case file. For if the marriage is irretrievably broken down nothing can be done about it.

The cost of this petition shall be paid by the Respondent.

Dated and delivered at Nyeri this 11th day of October 2012.

J. WAKIAGA

JUDGE

Judgment read in open court in the presence of the petitioner and in the absence of the respondent.

J. WAKIAGA

JUDGE