



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MALINDI

DIVORCE CAUSE NUMBER 8 OF 2009

J.C.K.....PETITIONER

-VERSUS-

R.K.M.....RESPONDENT

JUDGEMENT

J.C.K (the petitioner) has filed for divorce from R.K.M (the respondent).

The couple solemnized their marriage on 11th December 1992 at the Registrar of Marriage office Mombasa under the Marriage Act (Cap 150) and were issued with a Marriage Certificate. Thereafter they cohabited in M Estate, Kinango District Hospital and later, Mikindani in Mombasa. They have two issues of the marriage, namely L.S, a girl born on 18th May 1993 and V.M, a girl born on 4th March 1997. It is the petitioner's case that since the celebration of the union, the respondent has treated him with cruelty, and the particulars of cruelty are pleaded as follows;-

- a) The Respondent is of ungovernable temperament given to baseless accusations and has completely lost all trust in the Petitioner.
- b) Around April 1998 when the Petitioner had gone on an official trip to Nairobi, the respondent accused him of having taken along a married woman by the name C.M for immoral purposes, a fact that Respondent later confessed to be untrue.
- c) The Respondent is persistently out of the home, frolicking with her sister A, and without the Petitioner's consent
- d) The respondent has constantly abandoned the children of the marriage while frolicking with A and other strangers who are unknown to the petitioner
- e) Around April 2000, the Petitioner was working overnight and on arrival at home on a Sunday morning, the respondent rudely told him to organize breakfast, lunch and supper, as she and her sister were visiting her other sister in M – which trip the Petitioner later learnt was a fabrication and was covering for other unknown reasons.

f) Around 22nd October 2000, the Petitioner was away at work when the Respondent went to the matrimonial home and took away household items including children's beddings and hid them at her sister's house, thereby causing untold misery and suffering to the Petitioner and Children

g) Despite the Petitioner summoning family elders from both sides for reconciliation, the Respondent has always whittled down those efforts, never taking them seriously and this has led Petitioner to contemplate suicide

The Respondent is described as having arrogantly told Petitioner to look for another wife. Further that she is given to obnoxious practice of consulting witchdoctors, something which is frightening and shocking to the growing children who were brought up in Christian values.

From February 2010, the Respondent left the matrimonial home and would only go there when the Petitioner was away at work to take away household items. At around the same time, the matter was reported to the area chief, and in the presence of Administration Police, the Respondent agreed to take away all her personal belongings from the matrimonial home and that she would have the children visit her during the school holidays.

However when the children were taken to visit her during the April 2000 school vacation, the Respondent mistreated and abused them, telling them they were not her children, that she had picked them from the dustbin, and that her own children had Arab hair. After that incident, the Petitioner refused to let the children visit respondent but Respondent resorted to acts of intimidation by reporting to the Children's Department that Petitioner was mistreating the children.

Petitioner describes Respondent as a malicious individual and habitually nagging him, never satisfied with anything and totally averse to any meaningful agreement or understanding with him. Petitioner complains but he has suffered both mentally and physically as a result of the Respondent's conduct, and she has now completely abandoned the children, who now reside with the Petitioner. It is his pleading that since the marriage has broken down irretrievably, the same should be dissolved and he be awarded custody of the children.

The Respondent filed an answer to the petition and cross-petition. She denied all the allegations made by the Petitioner and put him to strict proof. She denies abandoning the children, frolicking with her sister without the Petitioner's consent, or being disrespectful or even causing the Petitioner embarrassment. She also denies consulting witchdoctors. She states that it is the Petitioner who has been guilty of adultery during the subsistence of the marriage, engaging in several liaisons with women both known and unknown to the Respondent on several occasions.

That Petitioner alleged to have gone on official trip to Nairobi, but ended up in Mombasa Beach Hotel with a married woman. The Respondent has on several occasions found love letters in the Petitioner's effects. The Petitioner's adulterous ways have caused her mental anguish and psychological and physical trauma leading to the breakdown of the marriage and she too prays for the dissolution of the union.

At the hearing, Mr Mouko appeared for the Petitioner while Mr Mwadilo was for the Respondent. The Petitioner described to this court the Respondent's secretive operations, where she had arranged for some visits with her sister without his knowledge and he discovered that the visits were not even genuine and this depressed him. He referred to the incident on Kenyatta Day when Respondent walked out on their visitors, much to the Petitioner's embarrassment.

The Respondent took one of their children to a witchdoctor and they were given some concoctions to apply in the house. It was his further testimony that whenever he left for night duty in hospital (as he was in medical practice,) the Respondent would come to his place of work, to enquire whether he had really reported on duty and this was humiliating to the Petitioner. The Respondent was arrogant and when the situation became unbearable, she left the matrimonial home in March 2000 just before schools closed.

She did not go with the children but would return during the Petitioner's absence and pick household

items and clothings which she would carry away. Since her departure, Petitioner does not know where she is and explains that attempts at reconciliation involving other family members did not yield much. Ever since leaving Respondent has never come back, not even to visit the children. Petitioner denies the allegations that he has liaisons with other women and maintains that the claims about love letters, are all false.

The Respondent did not wish to offer any evidence, and even abandoned her prayer for maintenance. On Cross-examination Petitioner denies that he chased away the Respondent, saying she deserted the matrimonial home when they lived in M. He however explained that because of the Respondent's habit of appearing in their home in his absence and carry away items, he reported the matter to the area chief, and Respondent was accompanied by APs on instruction to go and pick all what she wanted once rather than intermittently sneaked appearance into the house. Petitioner says ten years is a long time for them to have separated, he cannot tell what the Respondent has been upto and he is unwilling to take risks and accept her back into his life. He states clearly "I do not wish to live with her, I want my freedom".

On Re-examination Petitioner clarified that he sought the intervention of the Chief because he feared that at the rate Respondent was sneaking into the house, she would eventually collect everything – she was also threatening the maid, so Petitioner sought involvement of the chief to put a stop to the Respondent's activities.

A lot of what Petitioner states are allegations with no supporting evidence – he does not for instance specify what the unauthorized visits to Respondent's sister turned out to be. In any case the Respondent is not a child, so why would her movement be subject to permission from the Petitioner as though he was some sort of prefect.

The alleged incidences of monitoring by Respondent where she would go to hospital to check on the Petitioner have not a specific date. The walk out on the visitors is diminished by Petitioner's own pleadings that Respondent told him he would have to take care of the visitors because she was going to visit her sister in Matuga – it may be termed disappointing but rude, as I think overstretching the use of that word.

What emerges from the evidence is that the couple no longer love each other; there is a lot of mistrust, so that absence from the house is construed as mischief. The pair have not lived together for the last ten years, the Respondent having walked out of the union – her disinterest in the relationship is confirmed by her express wish not to be maintained by the Petitioner.

My finding is that:

- (1) The union has broken irretrievably.
- (2) There has been desertion by the Respondent.

On account of these two factors then the centre cannot hold and it is appropriate that the union be dissolved as prayed. This means that a decree nisi shall issue and be made absolute at the expiry of six months.

Each party shall bear its own costs.

Delivered and dated this 3rd day of March 2011

Mr. Mouko for petitioner
Mr. Mwadilo for respondent

H A OMONDI

JUDGE