

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

Divorce Cause 51 of 2008

DJB

.....PETITIONER

VERSUS

JMB.....RESPONDENT

JUDGMENT

The Petitioner, DJB and JMB were married on 25th May 1986 in accordance with Hindu Rites and religion. They were duly issued with a Marriage Certificate. They were blessed with three children who are now of age. They lived and cohabited in Nairobi and Mombasa. The marriage was not a happy one. The unhappiness arose from the behaviour and actions of the Respondent who took to drinking, gambling and assaulting the petitioner and by 15th August 2008 the marriage could not take the strain any more and the plaintiff lodged this petition for divorce on the ground of the respondent's cruelty.

The respondent has filed no answer to the petition. The petition came up for hearing on 19th March 2009 when the petitioner testified that the respondent was a person of drunken habits, used to gamble and had verbally and physically assaulted the petitioner. The petitioner further testified that she reported the physical assaults to the police but the police did not help her at all. She further testified that for the last six years, she has had no sexual relationship with the respondent and they have physically been separated from one another for the last four years. In those premises, the petitioner told the court that the couple cannot live together and prayed that her marriage with the respondent be dissolved.

Having heard the petitioner's testimony, which was not contradicted, I find that the petitioner has established the ground of cruelty alleged in the petition. That cruelty was willful and unjustified and was of such a character as would cause danger to the petitioner's life, both physically and mentally or would give rise to a reasonable apprehension of such danger. I will therefore allow the petition on the said ground of cruelty. I order that the petitioner's marriage to the respondent be and is hereby dissolved. Decree nisi should issue forthwith. The same shall be made absolute after one month thereafter.

The respondent shall pay the petitioner's costs.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 6TH DAY OF MAY 2009.

F.AZANGALALA

JUDGE

Read in the presence of:-

Oloo for the Petitioner.

F. AZANGALALA

JUDGE

6TH MAY 2009