



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
(MILIMANI LAW COURTS)
DIVORCE CAUSE 107 OF 2006

NHB PETITIONER

VERSUS

RNB RESPONDENT

JUDGMENT

The Petition is duly certified as an undefended cause.

The Petitioner gave his testimony that he was married with the Respondent on 8th June, 1991 as per Hindu rites and under the advice of the Respondent again underwent a marriage ceremony before the office of the Marriage Registrar, Nairobi on 11th February, 2004. According to him the Respondent had gone back to United Kingdom with a promise that she would call him to join her as per the British Immigration Laws which would not recognize the marriage celebrated and given certificate by a Hindu Priest. I may only note that both the marriages are monogamous marriages and thus so far as this court is concerned, this court has jurisdiction to hear this petition either under Hindu Marriages and Divorce Act or under the Marriage Act (cap 150).

Coming back to the testimony of the Petitioner, after the marriage in 1991, they cohabited at a premises along [*particulars withheld*] and for a while along [*particulars withheld*] at Kampala, Uganda.

The Petitioner is a resident of Kenya and the Respondent who is a British subject resided in Kenya from 1991 till the year 2002. They do not have a child of marriage.

In the year 2002, the Respondent disclosed that she had decided to go back to United Kingdom and settle there. After due deliberation, it was decided that the Petitioner would apply to seek settlement rights in United Kingdom by virtue of their marriage so that both can establish their new matrimonial home in United Kingdom. With this understanding the Petitioner consented and on 5th October, 2003 the Respondent left Kenya to settle in United Kingdom. It was understood that the Respondent to enable the Petitioner to process his application to migrate, would send him sponsorship papers and other required documents. She failed or neglected to do so without giving any reason. She visited the Petitioner three times for a short stay of ten days or less only to collect the belongings and lastly her jewelries under the pretext that she may need to raise some funds in order to send him sponsorship papers. Despite his

numerous calls and pleas to send him the papers or to return to Kenya, the Respondent has done neither of those.

The Petitioner stressed that apart from some initial conjugal relations, the Respondent had refused to have any marital relations with the Petitioner giving an excuse of trauma suffered by her due to previous abusive sexual experience. He stressed that except for initial relation for a short time, their marriage life is not in reality a marriage life. He lamented that she also duped him by giving false pretext to call him in United Kingdom where he permitted her to leave the matrimonial home. He also denied that before the marriage she disclosed the sexual abuse suffered by him prior to marriage.

He denied that he was accessory to or connived at her acts of constructive desertion and her refusal of giving him conjugal consort. He stressed that her acts have given him mental and physical stress and social ridicule. He also denied that he has colluded with the Respondent in presenting or prosecuting this petition.

According to him, his marriage to the Respondent was and is a sham and cannot be salvaged.

I do agree that the act of leaving the matrimonial home in May, 2003 under a false excuse is a constructive desertion and the petition is filed after the lapse of three years since her leaving the matrimonial home.

I would further find that such act of keeping the Petitioner under a false hope is also an act of cruelty when all these time he had suffered personal anguish and social embarrassment.

In the premises I am satisfied that the Petitioner has satisfied me that the Respondent has been cruel to him and has deserted the matrimonial home without any reasonable cause, in this case she has done so fraudulently.

In the premises, I order that the marriage solemnized between the parties is dissolved and Decree nisi be made absolute within 60 days.

There shall be no order as to costs.

Dated and signed at Nairobi this 4th day of May, 2009.

K.H. RAWAL

JUDGE

4.5.09