



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA Divorce Cause 28 of 2008

M.M. H ALIAS

M.M.W.....PETITIONER

VERSUS

R.B.H.....RESPONDENT

JUDGMENT

M.M.W also known as M.M.H (hereinafter “*the Petitioner*”) and R. B. H (hereinafter “*the Respondent*”) were married on 7th November 1970 under the Marriage Act (Cap 150 Laws of Kenya). The couple have five (5) issues namely: M.H.R, A.M.R, M.W.R, Z.N.R and S.W.R. All the issues are adults.

The couple lived and cohabited in Nairobi and in Mombasa until 2002 when cohabitation came to an end. On 9th June 2008 the Petitioner lodged this petition for divorce on the grounds of the Respondent’s desertion and cruelty.

With regard to desertion, the petitioner alleged that the respondent had left her for Uganda in 1998 and had only returned for the wedding of their son, M.W, in August 2002. He had then left the same day never to come back to the matrimonial home until the filing of this petition.

With regard to cruelty, the petitioner had alleged that the respondent did not provide for her or the issues of the marriage and she had single handedly raised the said children. She further alleged that the respondent denied her her conjugal rights.

The Respondent did not file an answer to the petition. The petition therefore proceeded ex-parte. In her oral testimony before me, the petitioner stated that since 2002, the respondent had not lived or cohabited with her. The Respondent now lives in Lunga Lunga with another woman while she lives in Mombasa. She testified that they have not had any conjugal relations for nearly ten (10) years. In her view, their marriage has irretrievably broken down and should be dissolved.

Having considered the evidence adduced before me, I am persuaded that the petitioner has established the ground of desertion. With regard to cruelty, the petitioner has demonstrated that for nearly ten (10) years the Respondent has denied her conjugal rights. That denial in my view amounts to the matrimonial offence of cruelty. The petitioner has therefore also established the ground of cruelty. The evidence of the petitioner has not in any event controverted.

In the end, I find that the Respondent has since the celebration of his marriage with the Petitioner treated the petitioner with cruelty and further that he is in desertion of the petitioner. The marriage between the

petitioner and the Respondent has irretrievably broken down and is hereby dissolved. Decree nisi to issue forthwith and the same to be made absolute after the statutory period.

I make no order as to costs.

Order accordingly.

DATED AND DELIVERED AT MOMBASA THIS 8TH DAY OF OCTOBER 2009.

F. AZANGALALA

JUDGE

Read in the presence of:-

Mutungu holding brief for Munyari for the Petitioner.

F. AZANGALALA

JUDGE

8TH OCTOBER 2009