



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KERICHO
Divorce Cause 5 of 2007

S.C.M.....PETITIONER

VERSUS

S.K.S.....RESPONDENT

JUDGMENT

Divorce case

I: Background

1. S.K.S a male adult aged 31 years old on 14th December, 1991 was a bachelor and Civil Servant with the Government of Kenya when he married S.C. then aged 27 years old, a spinster, and also a Civil Servant with the Government of Kenya.
2. Their marriage was solemnized under the **African Christian Marriage and Divorce Act (Cap 151)** at the A.G.C Tenwek Church in Rift Valley Province.
3. Two years later the couple had their first born called J born in 1993 but has since passed away sometime in 1999. The other two surviving children are Cr and C aged 11 and 9 years old respectively in 2007 when this matrimonial cause was filed.
4. There were three complainants in the Petition. This was;
 - a). **The respondent deserted her matrimonial home.**
 - b). **The respondent was and has acted cruelly towards the Petitioner.**
 - c). **Committing adultery**

5. At the start of this cause the petitioner abandoned the claim for adultery on grounds that the co

respondent had never been named in the Petition.

6. According to the petitioner the respondent left their matrimonial home in 1994 and appears not to have returned until five years later in 1999. This was the year when their first born child passed away. He came to attend the funeral. He left never to return until 2002 when his sister passed away and only for the funeral. He was not seen again until 2004 when he appeared to attend her mother's funeral (*his mother in law*). Since 2004 the petitioner had not been seen until the year 2007 when she filed this petition for divorce.

7. His absence from her life and that of her children was cruel. He failed to maintain his children in school nor visited.

8. The respondent entered appearance and filed a reply and cross-petition to the petitioner. He was represented by advocate.

9. In the reply he denied the allegations, and in the cross-petition he stated that it was the petitioner who was cruel. She substituted her sisters and friends for him.

10. He denied he ever deserted the matrimonial home and stated that the said transfer to Uasin Ngishu was the reasons that he was not at his matrimonial home.

11. The petitioner claimed that she is the one who maintained the petitioner and respondents children. The respondent had played no part.

II: Trial

12. On the day the case was called out the respondent was absent. He failed to attend court. His advocate was not able to find him and or his whereabouts. The petitioner gave evidence and prayed for a divorce. She asked for custody of the two children.

13. The petitioner denied she left the children with another pastor but explained that the two children grew very close to each other. One could not live without the other. The elder went to a boarding school and the other child not being permitted to attend the same school due to age opted out to live nearby with the pastors. So that she would not be traumatized by the separation of both of them.

14. The respondent was said not to be able to provide. Where he had a family he was cruel by being absent.

III: Findings

15. The respondent herein admits he had not been home. His explanation was that he had been transferred and therefore lived away. The petitioner's argument was that his whereabouts were completed and unknown. He was not able to traced nor found.

16. The respondent unfortunately failed to come to court to give evidence to prove his allegations against the petitioner. I have therefore only the petitioner's story and the pleadings by the respondent.

17. I find that the respondent did abandon the matrimonial home for a minimum of three years. This is sufficient grounds to grant a divorce.

18. I also found that the absence from the matrimonial home without word and assistance by way of maintenance amounted to cruelty.

19. I accordingly find that the petitioner has established her case. I would grant her petition for divorce. I

dismissed the cross-petition by the respondent with costs to the petitioner.

20. Order divorce nisi be and is hereby granted in favour of the petitioner against the respondent. The petitioner is to wait three months before applying for a divorce absolute.

DATED this 7th day of October, 2009 at **KERICHO**

M.A. ANG'AWA

JUDGE

Advocates

J.K. Kiplenge advocate instructed by M/S Juma Kiplenge & Co. advocates for the Petitioner – present

J.R. Kimetto advocate instructed by M/S Bett & Co. advocates for the Respondent - present