



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
DIVORCE CAUSE NO. 28 OF 1993

M M M..... PETITIONER

VERSUS

W M DEFENDANT

JUDGMENT

The Petitioner for divorce in this cause was filed on the 23.3.93 and brought under section 8(1) (b) of the Matrimonial Causes Act.

The parties are said to be married in 1965.

In 1983, the petitioner stated that the respondent was the one who deserted her.

In her petition she had alleged cruelty and adultery on the part of the respondent. The petitioner in her evidence before the court relied on desertion.

By profession, the Petitioner was attached to the Teachers Service Commission. She further was attached to the Methodist Church. On retiring she continues to serve as a volunteer with the church who accommodate her.

The advocate for the Petitioner notified the court in her opening address that the parties had settled the issue of property. The Petitioner was no longer pursuing the issue of maintenance nor the costs of this cause. In reply to the Petition and cross-petition filed by the respondent, he had alleged that there was adultery on the part of the respondent.

During the trial, the respondent gave no evidence. His advocate stated that he had strict instruction not to challenge or prosecute the cross petition nor call any evidence.

From the evidence before me it appear that in 1983, the petitioner appears to have moved away from the respondent to live with the church as an employee. It is difficult to see how the respondent would have deserted her.

I nonetheless find that the parties relationship appears to be restrained.

From the pleading above, there is indication of suspicious on both sides on the question of adultery committed or alleged to have been committed by both sides.

The petitioner did mention one incident of cruelty in her petition but was never relied on in evidence or proved.

Under Section 12 of the Matrimonial Cause (last part)

“The court may give to the respondent the same relief to which he[or she] would have been entitled if he [or she] had presented a petition seeking such relief.”

I believe that the Petitioner by being away from the Matrimonial home since 1983 is also guilty of desertion.

I recognise that the parties do not wish to make this marriage work.

They have been apart since 1983.

Under Section 10 of 2(c) of the Matrimonial Cause.

I am satisfied that the petitioner is not presented or prosecuted in collision with the respondent or neither of the respondent.

I hereby pronounce a decree of divorce. This decree, under section 15(1) of the Matrimonial Cause shall be a decree nisi and shall remain so for a period not less than six months.

There will be no orders as to costs.

Dated this 24th day of march, 1999 at Nairobi.

M.A. ANG'AWA

JUDGE