

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
DIVORCE CAUSE NO. 106 OF 1996

A.W.TAPPELLANT

VERSUS

S.TRESPONDENT

J U D G E M E N T

This is the wife's petition for an order that the marriage solemnized between the couple on 4.12.65 at P.C.E.A. Church Kambiri – Kiambu be dissolved on the grounds of the husbands adultery, cruelty, desertion and neglect to provide maintenance. The husband has filed an answer to the petition and a cross petition for an order to dissolve the marriage on the ground of the wife's cruelty. That answer and cross petition was however abandoned on the day of the hearing.

There are six children of the marriage all adults. The couple lived together as husband and wife until 11.4.91 where the petitioner left the matrimonial home. The petitioner has specified the incidences of adultery in which the husband has been involved in paragraphs 10 of the petition. The whole petition is verified by an affidavit.

In addition the petitioner has by oral evidence proved that the husband has indeed committed adultery more particular with a lady called A. The petitioners evidence is that the respondent started a relationship with A in 1990 when respondent started living with A at her house in Kibera even before the petitioner left the matrimonial home in April 1991.

In 1990 A got a child named M after the respondent mother and in 1992, A got twins. Petitioner states that present the respondent and A live together as husband and wife in As house at Karen college. The respondents counsel informed the court that respondent lives with A and for that reason respondent does not contest the divorce on the ground that respondent is living with A. The evidence of the petitioner that the respondent has been living with Anne since 1990; that three children have been born out of that relationship and that respondent currently lives with A as husband and wife has not been challenged and is indeed admitted by the respondent.

Consequently I find that respondent has committed adultery which petitioner has not condoned. I allow the petition with costs to the petitioner and order that the said marriage be and is hereby dissolved on the ground of the husband's adultery and a decree nisi do issue.

The remaining issue of the maintenance for the petitioner to be heard on a date to be agreed by the parties.

As the marriage has irretrievably by broken down I give leave to the petitioner to apply for decree nisi to be made absolute after expiry of 30 days.

E.M. GITHINJI

JUDGE

5.11.97

Mr. Muma present

Mr. Kibatia present