



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL CASE NO. 132 OF 1971**

**ADALJA.....APPLICANT**

**VERSUS**

**ADALJA.....RESPONDENT**

**ORDER**

This is an application by the wife for leave to file a petition for the dissolution of her marriage before the statutory three years.

The applicant alleges continued adultery as well as cruelty and desertion by the respondent. The respondent himself makes the following statements in his affidavit in reply:

“I did not wish to get married to her and ... my affections lay for the girl referred to in paragraph 17 of the applicant’s said affidavit, namely Kanchan Shah ... I was reluctantly forced into this marriage ... and I underwent the ceremony of the said marriage with a view to saving my family’s honour... [S]he well knows that I have no feelings for her and that I never had any feelings for her.”

Strangely enough, the respondent opposes the grant of leave to petition for divorce within three years of marriage. The applicant holds, I am told, a master’s degree of a university, and the respondent is a doctor. Continued adultery of the respondent and he does not deny it, does, in my opinion, amount to exceptional depravity as required by law. The adultery alleged - and not denied - is admittedly with one woman, but it is supplemented by acts of cruelty alleged by the applicant.

The quotation I have given above from the affidavit of the respondent leaves out certain other statements which are to the effect that the applicant knew before the marriage that he was in love with another girl, and the applicant agreed to share his affections with her. This is, of course, denied by the applicant.

The applicant has to live as a single woman cut off from her relatives who are all in India. There is no suggestion that this marriage can succeed. The respondent is going about openly with the other girl - so the applicant says. To expect the applicant to bear this for another eight months would in my opinion, constitute exceptional hardship.

All I am required to do at this stage is to make a provisional finding of fact that the case is one of exceptional depravity or exceptional hardship. I do find that this is certainly a case of exceptional depravity in which adultery is combined with cruelty.

The applicant also says that she is working as a teacher and that her work permit expires in May, 1971, and that it is desirable that her petition be heard while she is still in this country. The position may well be, as Mr Shah explains, that the immigration department will not ask her to leave so long as her marriage subsists. Whatever may be the position under the Immigration Act, it is to be hoped that the applicant will be allowed to remain here until her petition is finally disposed of. Mr Shah also argues that the applicant has allowed two years and four months to pass and that she can without any additional hardship wait another eight months. In view of the social position of the parties and in view of the clear statements made by the respondent which cut out all possibility of reconciliation, I think it is absolutely useless to

make the parties wait for another eight months.

The question of the effect of the magistrate's order on the right to divorce will probably arise but it does not fall for consideration at this stage.

Accordingly I allow the application with costs.

**Dated and Delivered at Nairobi this 11th day of March 1971.**

**C.SINGH**

**JUDGE**