



**REPUBLIC OF KENYA
IN THE COURT OF APPEAL OF KENYA
AT MOMBASA**

Divorce Cause 21 of 2008

GH.....PETITIONER

VERSUS

AHAO.....RESPONDENT

JUDGMENT

GH (hereinafter “the Petitioner”) and AHAO (hereinafter “the Respondent”) were married on 4th October 2002 under the Marriage Act (Cap 150 Laws of Kenya). The couple were not blessed with any issue. They lived and cohabited in Germany and Mombasa until January 2006 when cohabitation came to an end. On 30th April 2008, the Petitioner lodged this petition for divorce on the grounds of the respondent’s cruelty, adultery and desertion.

With regard to cruelty, the petitioner alleged, *inter alia*, that the respondent developed a violent nature and emotionally and physically denied him his conjugal rights. With regard to adultery, the petitioner alleged that the respondent during the subsistence of the marriage, committed adultery with one B in Nairobi and on many occasions spent nights outside the matrimonial home with different men. With regard to desertion, the petitioner alleged that the respondent left the matrimonial home several times without his knowledge or consent. The respondent did not file an answer to the petition.

In his oral testimony before me the petitioner stated that the respondent had no respect for him and often kissed different men in his presence. The petitioner further stated that, the respondent was aggressive to him and physically attacked him with a knife and a pair of scissors. She even bit him with her teeth and whenever he complained to the police, the respondent threatened to kill him.

With regard to adultery, the petitioner testified that the respondent frequently spent nights outside the matrimonial home with different men and her favourable night joints were Casablanca and Bobs night clubs. The petitioner produced photographs of the respondent kissing other men which he said he recovered from her handbag.

With regard to desertion, the petitioner testified of several episodes of the respondent leaving the matrimonial home and they finally parted ways in January 2006.

Having considered the evidence adduced before me, I am persuaded that the petitioner has established the grounds of cruelty and adultery. The conduct of the respondent was willful and unjustified and was a danger to the petitioner mentally and physically.

The evidence on the adultery of the respondent was also cogent. The photographs produced by the petitioner clearly supports the petitioner’s oral evidence of the adultery of the respondent. The evidence of the petitioner was not in any event controverted.

On the ground of desertion, I find that although by the time the petitioner lodged his petition he could not rely on desertion as a ground for desertion. It is now more than three (3) years since cohabitation between the petitioner and the respondent came to an end. I find therefore that the ground of desertion has also been established.

In the end, I find and hold that the respondent has since the celebration of his marriage with the respondent committed adultery and has further treated the petitioner with cruelty. I also find that the respondent 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 21ST DAY OF MAY 2009.

F. AZANGALALA

JUDGE

Read in the absence of the parties.

F. AZANGALALA

JUDGE

21ST MAY 2009