



REPUBLIC OF KENYA
IN THE COURT OF APPEAL OF KENYA
AT MALINDI
CRIMINAL APPEAL 161 OF 01

ANNE NYOKABI WANDERI.....PETITIONER

V E R S U S

JOHN WANDERI NJARAMBA.....RESPONDENT

J U D G M E N T

The Petitioner got married to the Respondent on 25.11.1995 at Mombasa. They started the marriage normally. The marriage was solemnized and a certificate of marriage No.A 026160 issued. It was produced into evidence as exhibit No.1. The marriage was blessed with a child called Gift Njaramba Wanderi. He is now about five.

Soon after the usual marriage problem started to occur between the parties. The Petitioner worked in an office with Express Kenya while the Respondent had no job. Then soon thereafter the Respondent started to apparently hearing stories about his wife. He started to lose faith and trust in her. He then started to become cruel to the Petitioner and to the child of the marriage. Petitioner has in her evidence shown instances of cruelty from Respondent. The show serious instances of physical assault and battery. A report from Dr. Frank Obwanda confirmed this. Reports were filed at Makupa Police Station. The same did not only occur to the Petitioner but also to the child. The Petitioner appears to have tried reconciliation, with friends and relatives and through the church but to no avail. The Respondent could even go to her office and cause scenes without minding the humiliation his wife was put into and the possibility of losing her job. However, when Petitioner realized that the Respondent will not change she left the matrimonial home never to return until she petitioned for the dissolution of the marriage.

When the Petitioner filed for the dissolution of the said marriage and served the papers upon her husband the Respondent, the latter chose not to answer. He was served with the hearing notice of this hearing. He chose not to attend. The legal presumption is that he does not oppose the petition. Thus the evidence of cruelty adduced herein stands unchallenged and shall accordingly be assumed to be true and correct.

I have considered the evidence adduced by Petitioner and accept that it establishes legal cruelty and adequately proves her case beyond a reasonable doubt. It proves that the Respondent treated Petitioner with cruelty and that Petitioner has not condoned same. It proves also that she has stayed away from the

matrimonial home for over three years due to the cruel conduct of the Respondent which amounts to desertion. It finally proves that the marriage is so irretrievably broken down that it will never be healed again. What it deserves is a dissolution. I accordingly see no impediments to making orders for dissolution of this marriage. I make the following orders:-

ORDERS:

- 1. The marriage between the parties is ordered dissolved and a decree nisi shall issue forthwith.**
- 2. The custody of Gift Njaramba Wanderi is hereby ordered to the Petitioner.**
- 3. Costs in the cause.**

Dated and delivered at Mombasa this 3rd day of June, 2002.

D. A. ONYANCHA

J U D G E