



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Divorce Case 51 of 2005

J M M PETITIONER

VERSUS

Z N M RESPONDENT

JUDGMENT

The date of hearing of this cause was fixed by the Petitioner's Advocates and at the time of hearing, neither the Petitioner nor his Advocate presented themselves to the court.

The Respondent and her Advocate on whom the notice of hearing date was served were present before the court. The Learned Counsel for the Respondent, in the circumstances, applied for order of dismissal of the petition for non-prosecution and that of hearing the cross-petition of the Respondent *ex parte*.

I allowed the application and the Respondent testified whose evidence remained uncontroverted. The Respondent struck me as a truthful witness who gave her evidence with honesty and occasional emotions.

She agreed that she was married to the Petitioner and produced a copy of their marriage certificate stating that the original certificate was with the Petitioner. In any event the Petitioner also has averred the same.

Since their marriage on 29th October, 1996 they lived together as wife and husband upto 2000. The marriage bore two children namely;

1. S W M born on 1997

2. JM M born on 1999.

Both these children are living with the Respondent/wife since she was forced to move out of the matrimonial home after she saw the Petitioner in an act of sexual activity with her neighbour on 14th March, 2000. She candidly stated that the scene which she saw with her own eyes shattered her completely forcing her to leave the matrimonial home. She also added that after two weeks when she went to the house to collect her belongings, she found the under wears and clothing of a woman. This fact was the last stroke on her scant confidence and dignity as the Petitioner's wife.

Her cross-petition was filed on 21st April, 2005 which is evidently after the lapse of three years from the date of her constructive desertion. She said that since then the Petitioner has not communicated with her or her children, whom she is looking after since 14th March, 2000.

With the aforesaid clear evidence, which I accept as credible, I can find that the Respondent has proved that the Petitioner is guilty of acts of cruelty adultery, and desertion. I find so as no right thinking wife can stay under one roof with a husband who commits those acts without seeking atonement.

She had also testified and I believe the same to be true that she has not connived at or condoned the said acts. Moreover she testified that she has not colluded with the Petitioner in prosecuting her cross-petition.

I therefore grant her the orders that:

- 1. The marriage in fact celebrated between her and the Petitioner be dissolved.**
- 2. The custody, care and control of two issues of the marriage named herein before be granted to the Respondent's mother.**
- 3. *Decree nisi* be made absolute within 90 days from today.**

K.H. RAWAL

JUDGE

24.3.2006