



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

MFB.....PETITIONER

VERSUS

NNS..... RESPONDENT

JUDGMENT

On 16.06.06 the petitioner filed petition dated 06.06.06 praying for the following orders:-

- a) That the marriage between the petitioner and respondent be dissolved.
- b) That the respondent do pay the costs of the petition.

The petition is based on the matrimonial offence of cruelty.

On 29.06.06 Messrs Kilonzo & Company Advocates entered appearance for the respondent. However, no answer to petition was filed on behalf of the respondent and this matter subsequently proceeded as an undefended cause.

At the hearing of the petition on 18.10.07, the petitioner was represented by learned counsel, Mr J.B. Havelock while there was no appearance for the respondent.

Salient facts pertaining to the petition may be broadly stated as under. The petitioner and respondent got married to each other at {PARTICULARS WITHHELD} under the Marriage Act, Cap.150. They cohabited at the respondent's parents' house at [PARTICULARS WITHHELD], Nairobi from the date of marriage until 30.10.04 when the petitioner finally moved out and now resides in a flat in [PARTICULARS WITHHELD], Parklands, Nairobi. There are no children of the marriage.

The petitioner is a [PARTICULARS WITHHELD] Nairobi where she earns a salary of Kshs.186,000/= per month. The respondent is a businessman with his own business in Nairobi dealing with vending machines but his income is not known to the petitioner.

It is the petitioner's case that the respondent has over the years, since celebration of the marriage, engaged in persistent acts of cruelty towards her. The petitioner has averred that on several occasions the respondent has beaten her while he was under the influence of alcohol and that the respondent's behaviour and alcoholism were so persistent that this was the principal reason why the petitioner made a decision not to have children. The petitioner narrated various instances of the respondent's cruelty, including the following:-

- i. On Saturday 22.06.02, while at a Nairobi discotheque, the respondent threw a punch at the petitioner causing her to attempt to leave and to drive away in the car which then hit into another vehicle. The respondent thereupon took the petitioner back to the matrimonial home and dragged her out of the vehicle causing her to hit her face on the concrete driveway. Thereafter the petitioner went to a doctor who examined her and later her mother-in-law took her to the M.I.T.C., Muthithi Road for X-Rays to check if the petitioner had broken any bones. The petitioner did not reveal this incident to anyone else at the time.
- ii. On 04.10.03 the petitioner was again beaten badly by the respondent and she sought and obtained medical treatment at the M.P. Shah Hospital, Nairobi. This incident occurred after the respondent and petitioner attended a local night spot in Westlands, Nairobi and as the petitioner was driving home, the respondent, in a drunken state, punched and hit the petitioner on her lips and nose and her upper lip was cut by his wedding ring.
- iii. Towards the end of 2003, the respondent, again in an inebriated condition, picked up a bedside cabinet in the matrimonial home and threatened to hit the petitioner with it over the head. The petitioner had to take refuge in the car parked in the driveway where she slept for the rest of the night, to her great discomfort.
- iv. On a Sunday in April, 2004, in a fit of anger during an argument with the petitioner, the respondent went to the kitchen in the matrimonial home, during daytime, and took a kitchen knife with which he threatened the petitioner and then held it to the nape of the petitioner's neck thereby causing her great emotional upset and distress.
- v. On 29.10.04, late at night, the respondent violently assaulted the petitioner and hit her by fists and blows. The petitioner again went for treatment at the M.P. Shah Hospital, Nairobi where bruises on her both cheeks with haematoma as well as bruising to her right wrist with tenderness were recorded. The Petitioner added that her discomfort arising from the beatings of the night of 29.10.04 was so much that she also attended the Nairobi Women's Hospital where her injuries were recorded as soft tissue injuries in the following terms: 'Physical assault resulting in multiple soft tissue injuries to the head, face and right upper limb.'

Following the beatings of 29.10.04, the petitioner never felt safe from assault by the respondent and on 30.10.04 she moved out and went to live with her sister on a semi-permanent basis.

The petitioner appeared before this court, testified and adopted the various accusations of cruelty recorded in her petition against the respondent.

I have given due consideration to the accusations of cruelty leveled by the petitioner against the respondent. As noted earlier, the respondent did not file any answer to the petition. The Petitioner's evidence remains uncontroverted and I accept it. I am satisfied that the respondent committed the matrimonial offence of cruelty against the petitioner. Accordingly, I hereby pronounce a decree of divorce and order that the marriage between the petitioner and respondent be and is hereby dissolved. *Decree nisi* shall issue forthwith, the same to be made absolute after expiry of the statutory period of 3 months upon application therefor. The respondent shall pay the petitioner her costs of the petition.

Orders accordingly.

Delivered at Nairobi this 29th day of November, 2007.

B.P. KUBO

JUDGE