

REPUBLIC OF KENYA

IN THE HIGH COURT AT MALINDI

DIVORCE CAUSE NO. 4 OF 2013

P. R.PETITIONER

VERSUS

J. B.RESPONDENT

JUDGMENT

1. This Petition proceeded as an undefended cause as the Respondent did not enter appearance or file an answer to the Petition.
2. Two grounds are pleaded, namely, cruelty and adultery.

During the hearing, the Petitioner adduced evidence in support of the petition. She also relied on the statement she had filed into court on 28th August, 2013.

3. The petitioner's evidence is uncontroverted. Briefly, it is her case that she and the respondent married under the Marriage Act on 21st August, 2007 and commenced cohabitation in Italy for five years and later in Watamu, Kenya. Apart from the complaint that the respondent could not keep a job and lied consistently, the petitioner asserts that the respondent employed elders devices to get money out of her, including stealing from her.
4. In particular, in February 2007 the respondent travelled home claiming that he had lost his father while the purpose was to wed one D M. She complains about the disappearance of the respondent from the home until late hours in the morning and denying conjugal rights to her by electing to sleep in a separate room.
5. Regarding the first ground, I am not convinced that the evidence adduced is sufficient. Cruelty must be shown to be willful and unjustifiable conduct that poses bodily or mental danger, threatens life, limb or health so as to cause reasonable apprehension. It must be sufficiently grave, cause injury to health or reasonable apprehension of such injury.
6. It is cruel that the respondent lied consistently to the petitioner and appeared to be more eager to get money out of her than anything else. However, this does not amount to the grave cruelty anticipated as a ground of divorce, notwithstanding the one cited occasion when the petitioner was allegedly slapped by the respondent.
7. In the case of **Meme v Meme [1976] KLR** Chesoni J, as he then was stated:

“Adultery is a serious offence and must, where it is alleged be proved clearly. To prove adultery, evidence of a guilty inclination or passion is needed in addition to the opportunity to commit it. The evidence of a single witness is enough without corroboration.”

In the case before us, the respondent has not only taken another woman as his wife, he also disappears from home without trace and when he returns avoids sexual contact with the petitioner. He even opts to use a separate room from her.

8. It would appear from this evidence that the respondent is indeed involved in an adulterous union or unions. The marriage itself is little more than a formality, having broken down irretrievably. I

do allow the petition for divorce on the ground of adultery.

Delivered and signed at Malindi this **20th** day of **December, 2013** in the presence of Mr. Gicharu holding brief for Ms. Mwangi for Petitioner.

Court clerk - John

C. W. Meoli

JUDGE