



REPUBLIC OF KENYA

IN THE HIGH COURT AT MALINDI

DIVORCE CAUSE NO. 12 OF 2012

R. C. R.PETITIONER

VERSUS

B. K. K.RESPONDENT

JUDGMENT

1. The petitioner and respondent got married on 17th December, 2005 under the African Christian Marriage and Divorce Act and cohabited as man and wife in Kilifi. They have one child aged six years, called W W C who is presently in the custody of the respondent.
2. There were unresolved issues between the parties culminating with the departure of the respondent from the matrimonial home in February, 2012. The respondent thereafter has cohabited with one Dr. V and they have a child by the name J. The petitioner has a lover, E K and is keen to get married to her.
3. When the petitioner filed his petition seeking divorce from the respondent on grounds of adultery, and desertion, the respondent denied the allegations. She too cross-petitioned for divorce citing cruelty and adultery by the respondent.
4. During the trial the parties gave evidence admitting that the marriage has broken down irretrievably. As usually happens in such cases each party blames the other for the breakdown.
5. There is no dispute however, that either party is currently involved in an adulterous relationship which clearly precedes the separation in February, 2012 and may be the cause of the breakdown in the marriage. The other allegations raised as grounds in the petition and cross-petition i.e desertion and cruelty are really peripheral. I find that each party herein is guilty of adultery during the subsistence of their marriage and it is inconsequential as to who started it all. The fact is that the marriage has broken down irretrievably.
6. For the foregoing reasons, I would allow dissolution of the marriage as prayed and order the parties to bear their own costs. The sole issue of the marriage between the parties is in the actual custody of the respondent, and it would seem that proceedings are ongoing in that regard before the Children's Court. I cannot find any reason to disturb the status quo regarding custody of the minor especially in light of her tender age, and the fact that the respondent is willing to grant the petitioner due access. I therefore decline the petitioner's prayer for custody of the minor.

Delivered and signed at Malindi this **20th** day of **December, 2013** in the presence of Mr. Lughanje for the petitioner, Mr. Kimani Gicharu holding brief for Mr. Jumbale for the respondent.

Court clerk - John

C. W. Meoli

JUDGE

MR. LUGHANJE – I pray for decree nisi to issue.

C. W. Meoli

JUDGE

COURT- Decree Nisi to issue.

Certified judgment be furnished to parties.

C. W. Meoli

JUDGE



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