



Case Number:	Divorce Cause 6 of 1999
Date Delivered:	14 Nov 2005
Case Class:	Civil
Court:	High Court at Kisumu
Case Action:	-
Judge:	Barabara Kiprugut Tanui
Citation:	D.A.S. v P.O.O. [2005] eKLR
Advocates:	-
Case Summary:	Family law - divorce - petition for dissolution of marriage - Luo customary marriage having been converted into a statutory marriage under the Marriage Act - allegations of adultery, cruelty and negligence against the respondent - whether the marriage had irretrievably broken down and should be dissolved - custody of children.
Court Division:	Family
History Magistrates:	-
County:	Kisumu
Docket Number:	-
History Docket Number:	-
Case Outcome:	Application allowed
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-

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REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISUMU

Divorce Cause 6 of 1999

D.A.S..... PETITIONER

-VERSUS

P.O.O..... RESPONDENT

JUDGMENT

By her petition dated 28th December 1999, D.A.S., seeks a dissolution of her marriage to P.O.O., which the two contracted in 1979 under Luo Customary Law, which was converted into a marriage under the Marriage Act Cap 150 on 8th February 1985 in the District Commissioner's office, Nanyuki. The petitioner averred that after celebration of the said marriage, the parties cohabited and lived in Migori, Kisumu, Nanyuki and Kisii and that the marriage is blessed with three issues namely:-

- LA born in 1981;
- KO born in 1986;
- DO born in 1991.

The petitioner further averred that the respondent has been guilty of adultery he committed with various women known and unknown to the petitioner and that in particular he committed with S.A. and G.B.A. She also averred that the respondent has treated her with cruelty, negligence. She further averred that the respondent is now habitual drunkard whose money is spent on beer and women. She added that on several occasions he had sold her property whenever she is not at home and according to her the parties are now so incompatible that the marriage has irretrievably been broken down.

The petition was served upon the respondent but he did not make any response. When the matter eventually came before me, the petitioner confirmed what she had pleaded in her petition. She added that the three children of marriage live with her and that the respondent has committed adultery with S.A. and G.B.A. and that he has on many times treated her with cruelty and has been in the habit of selling household goods without her consent. According to the petitioner, the respondent is now a habitual drunkard and had neglected her and the children. She also claimed that since 1999, the relationship has completely ceased and that the respondent had told her parents that he did not want to see her and the children. She therefore, sought that the said marriage be dissolved and that she be given custody of the children. The petitioner claimed that during the subsistence of the said marriage, the couple acquired a plot [particulars withheld] for less than Kshs 200,000/=. She added that thereafter, she alone built a house on the plot but it has now been registered in the name of the respondent.

I have perused the record of this petition and bearing the evidence led, I am satisfied that the marriage between the petitioner and the respondent has really retrievably broken down. I would therefore order that it be dissolved as prayed.

I award the custody of the children of the marriage to the petitioner. I also order that the property on

plot [particulars withheld], be sold and the proceeds of it be shared between the petitioner and the respondent in the ratio of 80% : 20% . The decree nisi herein is to be absolute after 3 months.

Dated and delivered at Kisumu this **14th November, 2005.**

B. K. TANUI
JUDGE

In the presence of: D.A.S. (petitioner)



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