



Case Number:	div cause 3 of 01
Date Delivered:	13 Nov 2003
Case Class:	Civil
Court:	High Court at Nakuru
Case Action:	-
Judge:	Muga Apondi
Citation:	ELIAS TIMOTHY MAINA NJUGUNA vs JANE WAMAITHA MAINA[2003] eKLR
Advocates:	-
Case Summary:	-
Court Division:	-
History Magistrates:	-
County:	-
Docket Number:	-
History Docket Number:	-
Case Outcome:	-
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 NAKURU
DIVORCE CAUSE NO. 3 OF 2001

ELIAS TIMOTHY MAINA NJUGUNA.....PETITIONER

VERSUS

JANE WAMAITHA MAINA.....RESPONDENT

JUDGMENT

According to the petitioner, he got married to the respondent on 26th June, 1971 at the District Commissioner's Office, Nakuru. Consequently, the couple were issued with a Marriage Certificate – Exhibit 1. Subsequent to their wedding they lived and cohabited at Kinangop and later moved to Ngorika Scheme, Nyandarua. Later, the couple moved to Engashura.

Unfortunately, in 1992, the couple parted ways. The petitioner explained that the first born viz, Catherine Wairimu was born out of wedlock – and that consequently they had four children. The children were born in the following years:

- 1967, 1971, 1973, 1974 and 1980.

That in effect means that all the children are now adults. The petitioner lamented that the wife deserted him in April, 1992 and came to stay in Free Area, Nakuru. However, when she refused to undergo an HIV test, the petitioner moved to the Guest Wing.

Thereafter in September, 1993, the couple had a disagreement when the respondent squandered the school fees for the children. Besides the above, the petitioner complained that in August, 1994, the respondent went back and started quarreling him. According to the petitioner, the main problem that the couple had was that the respondent had wanted to marry off their daughter without his permission.

Despite the fact that there were many meetings that were held for reconciliation purposes – the same were in vain. Eventually, their daughter got married on 17th December, 1994 without the knowledge and permission of the petitioner.

The latter was categorical that he and the respondent have never stayed as man and wife since 1992. The petitioner denied ever deserting the matrimonial home nor being cruel to the respondent. The petitioner deposed that though he had made all efforts to save their marriage – the same have failed and hence he has requested the Court to dissolve the same. He has also prayed that the cross-petition be dismissed with costs.

The Court recalls that though the respondent had been served to appear for hearing on 17th June, 2003 – she failed to turn up. The case was duly adjourned to 18th September, 2003 – and she was served. Due to her absence, the Court decided to proceed ex-parte. After the close of the petitioner's

case, the counsel handed in written submissions to the Court.

This Court has carefully perused both the pleadings and the oral evidence that was adduced by the petitioner. The evidence of the latter has not been contradicted nor controverted.

It is apparent that the marriage has irretrievably broken and cannot be salvaged – since all diligent and reasonable efforts have failed to bear any fruit.

Besides the above, the petitioner has proved that the respondent has treated him with cruelty by marrying their daughter without his knowledge and consent. In addition to the above, the respondent was also cruel by her refusal to undergo an HIV test after deserting her matrimonial home for about a year.

In view of the above, the Court has reached the conclusion that the petitioner has proved his case on a balance of probabilities. The upshot is that I hereby enter judgment in his favour. In the same breadth, I hereby dismiss the cross-petition which has no merits at all.

In conclusion, I hereby allow the petition and order that a decree nisi do issue forthwith to be made absolute after a period of 6 months from the date hereof. Costs in the cause.

MUGA APONDI

JUDGE

Judgment read, signed and delivered in open Court in the presence of M/s

Mathenge for petitioner.

MUGA APONDI

JUDGE

13TH NOVEMBER, 2003



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