



**EOO v EWN (Divorce Cause E001 of 2021)
[2023] KEHC 26470 (KLR) (15 December 2023) (Judgment)**

Neutral citation: [2023] KEHC 26470 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
DIVORCE CAUSE E001 OF 2021
JRA WANANDA, J
DECEMBER 15, 2023**

BETWEEN

EOO PETITIONER

AND

EWN RESPONDENT

JUDGMENT

1. By the Petition dated 6/04/2021 and filed through Messrs Kitiwa & Partners Advocates, the Petitioner pleaded that on 2/01/2004 herself and the Respondent got married under the African Christian Marriage and Divorce Act, Cap. 151, the marriage was celebrated at the [Particularswithheld] Church in Nairobi, the marriage has been blessed with 3 issues, the 1st and the 2nd issues are now adults and the 3rd one is still a minor, trouble in the marriage arose from the Respondent’s cruelty and being extremely emotional, as a result, the Petitioner moved out of the matrimonial home and has been staying on his own in a rented house since August 2019. He gave particulars of the Respondent’s cruelty as verbally abusing the Petitioner, injuring and not caring about the feelings of the Petitioner and being temperamental. According to the Petitioner therefore, the marriage has irretrievably broken down and there is no chance for reconciliation hence the need to dissolve it.
2. The Petitioner then stated that during the marriage, the couple had acquired a number of properties, mainly parcels of land, which he listed and prayed that the Court makes a determination on the sharing of the matrimonial property.
3. In the circumstances, the Petitioner prayed that the marriage be declared as irretrievably broken down. He therefore sought for an order dissolving the marriage, and for orders that the Court do share out the matrimonial property. He also sought costs of the Petition.
4. In response, through Messrs Kariuki Mwaniki & Co., the Respondent filed her Answer to Petition dated 4/10/2022 in which she denied that it was as a result of her cruelty that the Petitioner moved



out of the matrimonial home in August 2019 or that she has subjected the Petitioner to any emotional or psychological trauma. She however concurred that the marriage has irretrievably broken down and cannot be salvaged. She attributed blame to the Petitioner's behaviour and claimed that since the celebration of the marriage, she has never enjoyed peace since the Petitioner has been cruel leading her to suffer psychological trauma. She then gave particulars of the Petitioner's cruelty, desertion and adultery which she listed as denying the Respondent consortium and conjugal rights, harassing and issuing threats to the Respondent, belittling the Respondent and subjecting her to emotional distress, deserting the matrimonial home for a period of 3 years, quarrelling and disrespecting the Respondent and engaging in a smear campaign with a view of disparaging the Respondent's reputation. According to the Respondent, all attempts at reconciliation have not been successful in view of the Petitioner's conduct and lack of commitment. She too prayed that the marriage be dissolved, and for costs.

Hearing of the Cause

5. This matter was then fixed to proceed to trial on 17/10/2023. However, before the trial took off on that date, the Petitioner's Counsel Ms Wambani requested the Court to allow her to withdraw the main Petition. As this request was not opposed, I allowed the same and accordingly marked the Petition as withdrawn.
6. On her part, the Respondent, through her Counsel, Mr. Kariuki, sought to proceed with her Cross-Petition. I therefore allowed the Cross-Petition to be prosecuted.
7. When she took the stand, the Respondent reiterated and expounded on the matters set out in her Cross-Petition and which I have already recounted above. She stressed that the couple does not have any companionship, that the Petitioner has deserted her and keeps humiliating her in public, and that the marriage has irretrievably broken down. In cross-examination, she stated that the couple has not been living together for the last 4 years and she therefore wanted the marriage to be annulled.
8. Upon close of the Respondent's case, the parties' Advocates informed the Court that neither of them intended to file closing Submissions. They therefore requested the Court to proceed to write the Judgment.

Analysis and Determination

9. Upon considering the record, including the Respondent's evidence, the issue that arises for determination, in my view, is "whether the marriage has irretrievably broken to the extent that it should be dissolved."
10. Under Section 66(6) of the *Marriage Act* 2014, a marriage is irretrievably broken down where -
 - (6) A marriage has irretrievably broken down if-
 - a) A spouse commits adultery;
 - b) A spouse is cruel to the other spouse or to any child of the marriage;
 - c) A spouse wilfully neglects the other spouse for at least two years immediately preceding the date of presentation of the petition;
 - d) The spouses have been separated for at least two years, whether voluntary or by decree of the Court, where it has;
 - e) A spouse has deserted the other or at least three years immediately preceding the date of presentation of the petition;



- f) A spouse has been sentenced to a term of imprisonment of the for life or for a term of seven years or more;
 - g) A spouse suffers from incurable insanity, where two doctors, at least one of whom is qualified or experienced in psychiatry, have certified that the insanity is incurable or that recovery is improbable during the life time of the Respondent in the light of existing medical knowledge; or
 - h) Any other ground as the Court may deem appropriate. (underlining mine)
11. As already recounted, it was the Respondent's testimony that the couple does not have any companionship, that the Petitioner has deserted her and keeps humiliating her in public. According to her therefore, the marriage has irretrievably broken down. In cross-examination, she reiterated that the couple has not been living together for the last 4 years and she wanted the married to be annulled. These allegations all fall within the provisions of grounds (b), (c) (d) (d) and even (h) as I have underlined above. Insofar as no witness was called by the Petitioner to contradict these allegations, the same remain uncontroverted and I therefore have no grounds to disbelieve or disprove the same. I therefore accept the Respondent's testimony and find that the marriage has irretrievably broken down and is beyond salvage.

Final Orders

12. The upshot of my findings above is that the Respondent's Cross-Petition is allowed. Consequently, I issue orders as follows:
- i. The marriage between the Petitioner and the Respondent celebrated and/or conducted on 2/01/2004 at the Holy Family Basilica, Nairobi under the African Christian Marriage and Divorce Act, Cap. 115, Laws of Kenya (now repealed) is hereby dissolved.
 - ii. Decree Nisi to issue, and to be made absolute upon lapse of three (3) months from the date hereof.
 - iii. Considering that this is a family matter, I direct that each party shall bear his or her own costs of the Cause.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 15TH DAY OF DECEMBER 2023

WANANDA J.R. ANURO

JUDGE

