



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

DIVORCE CAUSE NO. E006 OF 2020

HKDPETITIONER

VERSUS

MP.....RESPONDENT

JUDGMENT

1. HKD the Petitioner and MP the Respondent solemnized their civil marriage at Perth, Western Australia on 13.7.19. Thereafter they had a Hindu ritual ceremony in Parklands, Nairobi on 20.1.2020. Following their marriage, the Petitioner left employment as an accountant in Perth, Australia to accompany and support her husband in Singapore where he was Vice President of [Particulars withheld]. The parties cohabited in Nairobi from 14.1.2020 to 23.1.2020, India from 24.1.2020 to 28.1.2020, Melbourne Australia from 29.1.2020 to 2.2.2020 and in Singapore from 2.2.2020 to 16.6.2020. The marriage is not blessed with any children.

2. After a period of only 1 year and 2 months after the marriage, the Petitioner has filed this Petition dated 11.9.2020, seeking dissolution of the marriage on the ground of cruelty. The Petitioner also seeks that the Respondent be ordered to provide maintenance for her and to ship at his cost, the wedding ring given to the Respondent and her belongings, from their matrimonial homes in Singapore and Australia to Kenya at his cost. She also sought damages for pain and suffering and costs.

3. The particulars of cruelty as set out in paragraph 9 of the Petition are that the Respondent damaged the Petitioner's self-esteem by consistently bullying and demeaning her in public and private; deprived the Petitioner of basic necessities by denying her access to bank accounts; alienated the Petitioner by denying her freedom of movement and access to family and friends as well as breaking her phone; refusing to pay her air ticket from Singapore to Kenya; threatening to kill her. The Petitioner averred that as a consequence of the Respondent's conduct, she has suffered anxiety and the marriage has irretrievably broken down.

4. The Respondent though served with the Petition and Notice to Appear, failed to file appearance. The Registrar's certificate was issued on 15.4.21 paving the way for the matter to proceed to hearing as an undefended cause.

5. The marriage between the parties though solemnised in Australia, is recognised in Kenya as a valid civil marriage by dint of Section 40 of the Marriage Act, 2014 which provides:

A civil marriage contracted in a foreign country shall be recognized as a valid marriage if—

(a) it is contracted in accordance with the law of that country;

(b) it is consistent with the provisions of this Part; and

(c) the parties have the capacity to marry under this Act.

6. The provisions of Section 66 of the Act apply with respect to dissolution of a civil marriage. Section 66(1) bars a party to a civil marriage from petitioning the Court for the dissolution of the marriage unless 3 years have elapsed since the celebration of the marriage. This provision was however declared unconstitutional by Nyakundi, J. in the case of Tukero ole Kina v Attorney General & another [2019] eKLR. The learned Judge stated:

In the upshot, the Court hereby makes the declaration that Section 66 (1) of the Marriage Act, 2014 is unconstitutional, null and void to the extent that it limits the presentation of a Petition for separation or divorce in a civil marriage until the expiry of three years.

7. Cruelty and the irretrievable breakdown of a marriage are among of the grounds upon which a civil marriage may be dissolved. Section 66(2) of the Act stipulates as follows:

A party to a marriage celebrated under Part IV may only petition the court for the separation of the parties or the dissolution of the marriage on the following grounds—

- (a) adultery by the other spouse;*
- (b) cruelty by the other spouse;*
- (c) exceptional depravity by the other spouse;*
- (d) desertion by the other spouse for at least three years; or*
- (e) the irretrievable breakdown of the marriage”*

8. In her uncontroverted testimony, the Petitioner stated that she suffered mental abuse at the hands of the Respondent; that he forbade her to talk to her family and friends; that he severally threw her out of the matrimonial home leaving her helpless as she did not have any money. Following his refusal to pay for her air ticket to Kenya, her parents paid for the same and she returned home on 16.6.2020. In the absence of evidence to the contrary, I am satisfied that the ground of cruelty has been established.

9. It is noted that no evidence was adduced at the hearing, in support for her prayers for maintenance, shipping of her personal belongings from their matrimonial homes in Singapore and Australia to Kenya and for damages for pain and suffering. The Court cannot therefore make any orders in respect of the prayers, which are hereby deemed to have been abandoned.

10. In the result I do pronounce a decree of divorce and order that the marriage between the Petitioner and the Respondent **solemnized** on 13.7.19 at Perth, Western Australia and celebrated in a Hindu ritual ceremony in Parklands, Nairobi on 20.1.2020 be and is hereby dissolved. Decree *nisi* to issue and the same to be made absolute within 1 month. All other prayers are hereby declined. This being an undefended cause, there shall be no order as to costs.

DATED, SIGNED AND DELIVERED IN NAIROBI THIS 21ST DAY OF MAY 2021

M. THANDE

JUDGE

In the presence of: -

.....**for the Petitioner**

.....**for the Respondent**

.....**Court Assistant**