



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

DIVORCE CAUSE NO. 210 OF 2014

BDG.....PETITIONER

V E R S U S

BBG.....RESPONDENT

JUDGMENT

(1) The Petitioner herein **BDG** filed this Petition dated **27th October 2014** in which he prayed that:-

- (a) An order that the Hindu Marriage existing between the Petitioner and the Respondent be judicially DISSOLVED.**
- (b) An order that the Respondent to forthwith vacate the Petitioner's house at Plot Number [...] NGAO ROAD F2.**
- (c) That the Respondent be condemned to pay the cost of these proceedings.**
- (d) Any other or better relief the Court may deem fit.**

(2) The Respondent **BBG** filed a Reply to Petition and Cross-Petition dated **4th July 2017**.

(3) The matter came up for hearing before this Court on **10th June 2021**. On that day counsel for the Respondent indicated that they had been unable to trace their client and asked to be allowed more time to trace her. The Court granted the adjournment and set the matter for hearing on **1st July 2021**.

(4) On the next hearing date the Respondent did not appear and neither did her Advocate despite his having been present when the hearing date was taken. No reason and / or explanation was advanced for the absence of representation for the Respondent. As such the hearing proceeded in the absence of the Respondent.

(5) The Petitioner told the Court that he got married to the Respondent on **6th July 2000** in **India**. He produced as evidence of their marriage a copy of their Marriage Certificate (Annexure '**BDG-1**') to the Petition. Following the marriage in **India** the couple moved to **Kenya** and set up home in the **Parklands** area of **Nairobi**. Their union was blessed with two (2) children namely:-

- (i) SBG – born on 15th February 2002** as evidenced by the copy of Birth Certificate Serial Number [...] (Annexure '**BDG-2**').
- (ii) JBG – born on 13th January 2013** as evidenced by the copy of Birth Certificate Serial Number [...] (Annexure '**BDG-2(b)**').

(6) The Petitioner told the Court that initially the couple lived harmoniously but that **two (2) years** after the marriage problems set in. The Respondent became violent and abusive towards the Petitioner and her family members. That the Petitioner sought to resolve the issues by seeking advice from a Hindu Priest but to no avail. The Petitioner also states that the couple attended Marriage Counselling in the hope that this would save their union but the counselling was not successful. The couple separated **seven (7) years** ago. The Petitioner told the Court that he left the matrimonial home in **Parklands** and together with the couple's **two (2) children** moved into the home of his younger brother in **Westlands**.

(7) The Petitioner stated that the issue of custody and access to the two (2) children was canvassed in the Children Court vide **Nairobi Childrens Case No. 999 of 2017**. In said case custody of the **two (2) children** was awarded to the Petitioner and the Respondent was granted visitation rights. However the Petitioner told the Court that the Respondent visits the children only very rarely. He now seeks the dissolution

of his marriage to the Respondent and further prays that the Cross-Petition be dismissed.

(8) As stated earlier neither the Respondent nor her Advocate appeared in Court for the hearing of this Petition. As such the Petition was essentially unopposed.

ANALYSIS AND DETERMINATION

(9) The parties herein contracted their marriage under **Hindu Laws. Section 70** of the **Marriage Act, 2014** which deals with the dissolution of Hindu Marriage provides as follows:-

“A party to a marriage celebrated under Part VI may petition the Court for the dissolution of the marriage on the ground that-

(a) the other party has deserted the Petitioner for at

least three years before the making of the Petition.

(b) the other party has converted to another religion.

(c) since the celebration of the marriage, the other party has committed rape, sodomy, bestiality or adultery.

(d) the other party has committed cruelty on the other; and

(e) the other party has committed exceptional depravity on the other.”

(10) The Petitioner has claimed that the Respondent was violent and abusive towards himself and his father. That the Respondent would shout, bang doors and throw things about. The Petitioner cited one occasion when the Respondent threw a sufuria and hit his father in the eye causing harm to the old man's eye. **PW2 MDG** who is the Petitioner's younger brother, confirmed that he witnessed this particular incident as well as other violent outbursts from the Respondent.

(11) The Petitioner further testified that the Respondent on **1st July 2015** assaulted him causing him personal injury. That he reported the said assault to the police vide OB Number **03** of **1st July 2015**. He produced the copy of OB Report as an exhibit **PEXB 3(a)**. The Petitioner told the Court that he sought treatment for the injuries which he sustained as a result of this assault at **Avenue Hospital**. He produces the treatment notes as exhibits **Pexb 3(b)**.

(12) The treatment notes indicate that upon examination the Petitioner was found to have bruises caused by a blunt object. The evidence of the Petitioner and **PW2** together with the exhibits presented in court are sufficient proof of the assault upon the Petitioner. The said assault amounts to physical cruelty.

(13) Aside from these incidences of cruelty, the Petitioner's evidence is that he and the Respondent have lived separately for the past **seven (7) years**. The Petitioner moved out of the matrimonial home with the couple's children and currently lives with his brother in **Westlands**. **PW2** the Petitioner's brother confirms that he is accommodating the Petitioner and his **two (2) children**. The Petitioner told the Court that he is not aware of the Respondent's current whereabouts.

(14) **Section 66(6)** of the **Marriage Act** provides that-

“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 willfully 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 spouse 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.” [own emphasis]

(15) From the evidence adduced by the Petitioner the picture that emerges is of a marriage that has irretrievably broken down. The couple have not lived under the same roof for the past **seven (7) years** and currently there is no union or communication between them. It is clear that the marriage has irretrievably broken down.

(16) In the case of **CRVH v KSVH [2021]eKLR**, supra, it was held that:-

“(11) In his Petition the Petitioner has alleged cruelty towards him by the Respondent. Secondly the parties have now been separated for roughly six (6) years. It is clear that this is a marriage that has irretrievably broken down.”

(17) The Respondent did not prosecute her cross-petition therefore the same is dismissed in its entirety. Finally this Court allows the Petition and makes the following orders:-

(1) The Petitioners marriage to the Respondent be and is hereby dissolved.

(2) Decree nisi to issue to be made absolute within ninety (90) days.

(3) No orders on costs.

DATED IN NAIROBI THIS 30TH DAY OF JULY, 2021.

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MAUREEN A. ODERO

JUDGE