



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

DIVORCE CAUSE NO. 143 OF 1998

BETWEEN

JWW.....PETITIONER

AND

DR. AWW.....RESPONDENT

JUDGMENT

1. The Petitioner **JWW** moved this court by way of a Petition dated 2nd December 1998 seeking for dissolution of the marriage between her and the Cross-Petitioner based on grounds of desertion. **Dr. AWW** the Respondent on his part filed an answer to the Petition and Cross Petition dated 19th January,1999. He denied allegation levelled against him by the Petitioner and claimed that it is the Petitioner who severally refused to join the cross-petitioner at his various work places, and she subjected him to mental torture due to her actions.

2. On the 12th of March 2009 the Petition was dismissed for non-prosecution. The cross-petitioner being desirous of proceeding with the Cross Petition set the same down for hearing. Despite service of the date for hearing, neither the Petitioner nor her counsel were present in court bearing in mind also that no answer to the Cross Petition had been filed.

3. In his statement the Cross Petitioner stated that he met the Petitioner around 1975 and soon thereafter they cohabited together and the union begot 4 children, all of whom are now adults.

4. It was the Cross- Petitioner evidence that being a medical doctor he was transferred variously to Kakamega, Siaya, Busia hospital and later Egerton University, the Petitioner refused to join him or live with him in all those places.

5. That the Petitioner was an insecure individual, she did not allow the Cross- Petitioner’s relative visit and was verbally violent. He gave an incident where she refused to join him visit the village and when he went with their 4 children, she reported a kidnap case with Kilimani Police, causing his arrest.

6. He urged that the acts of the Petitioner were deliberate, caused him pain and suffering and that the parties have for over 26 years lived separately and thus no marriage existed between the two.

7. The Marriage Act provides as follows; -

Section 66

“(2) 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 grounds-

(e) the irretrievable breakdown of marriage.”

(6) A marriage has irretrievably broken down if-

(c) a spouse wilfully neglects the other spouse for at least two years immediately preceding the date of the petition;

(d) the spouses have been separated for at least two years, whether voluntarily or by decree of the court.

(e) a spouse has deserted the other spouse or at least three years immediately preceding the date of presentation of the petition.

(f) any other ground as the court may deem appropriate.

8. From the evidence on record and the statement of the Cross-Petitioner parties herein have for more than 26 years lived apart from each other. Certainly, both have physically and emotionally moved separate ways, 26 years is a long time. The marriage between the parties has obviously irretrievably broken down and it will serve no purpose to hold the two together any longer.

9. Based on the evidence on record JWW and DR. AWW be dissolved forthwith.

10. The decree be made absolute after lapse of three months.

11. Each party to meet his/her own costs.

DATED, and DELIVERED at NAIROBI this 20TH DAY OF FEBRUARY, 2020.

.....

ALI-ARONI

JUDGE

In the presence of:

Petitioner

Cross-Petitioner