



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

DIVORCE CAUSE NO. 62 OF 2013

BETWEEN

AP.....PETITIONER

AND

PAP.....RESPONDENT

JUDGMENT

1. The Petitioner **AP** and the Respondent **PAP** solemnised their marriage in India on the 17th of March, 1992 as evidenced by the memorandum of marriage issued by the Registrar of marriages in India.
2. The said parties thereafter cohabited both in India and Kenya. Their last residence was at Easy Prestige Apartments along Mombasa road.
3. The union brought forth two issues namely;
 - i. **HAP, a son born on 17th October, 1995**
 - ii. **YAP, a daughter born on 10th May, 2001.**
4. In a petition filed on the 27th of December 2012 the Petitioner's complaint was based on the allegations of cruelty as outlined in paragraph 8 thereof.
5. The Petitioner sought for dissolution of marriage, custody and costs as a result.
6. In an answer to the petition dated and filed on the 17th of April 2014 the Respondent averred that the two lived separately as the Petitioner lived with a third party and had indeed sired a child with the said lady.
7. The Respondent further denied the allegations of cruelty attributed against her including desertion from her matrimonial home instead she averred that she had made numerous attempts to have the Petitioner return home but he declined as he is now married to another person.
8. The Respondent on her part sought for dismissal of the Petition and costs.
9. I must say from the onset that this is a delayed judgment purposely as it was evident to this court that the state of the union between the two parties has had a devastating effect both on the Respondent and the 1st child of the union.
10. The court in the meanwhile directed the parties to work on a relationship that will, despite the outcome of the court's decision should allow the two nurture the two issues of the marriage in a way that will see them grow to be responsible, independent and well groomed adults and as the Respondent picks up her life, accepts the reality and makes the best out of the circumstances.
11. The Petitioner in his evidence informed the court that he is a businessman, that the marriage between him and the Respondent cannot work due to regular quarrels from the Respondent which has affected him and the issues. Further that neither long separation from each

other nor attempts at reconciliation has assisted the situation.

12. The Petitioner further informed the court that he lives with his son and their daughter visits him regularly. That he has been paying school fees for his children but is unable to run two homes and therefore does not assist the Respondent.

13. The Respondent PAP on her part informed the court that before her marriage she worked as a doctor in India. That she resigned from her work to come and live with the Petitioner in Nairobi. That after separation since the Petitioner did not maintain her; she got a job as an Administrator with a company in Limuru as she has been unable to get a job in Kenya befitting her training though she is a holder of Bachelor of medicine and surgery as her qualifications are not valid locally. She alleged that her husband has been adulterous with various women and currently lives with an African woman and has two children with her. That the Petitioner's behaviour forced her to return to India where she was for several months and due to depression needed medical attention. That on return there was no home for her as the Petitioner lived with the other woman. That she sought refuge with friends and eventually got a job. That the Petitioner threatened not to take care of the children if she stayed with them. Their son moved to live with the Petitioner though she declined to release her daughter.

14. The Respondent urged the court to dismiss the petition as she needs her husband back and their children need their father.

15. Having heard both sides the court saw in the Respondent the devastating effect of divorce proceedings where one party moves on and the other is left clinging to collapsed marriage.

16. From the Respondent herself the Petitioner lives with another woman, and has sired children with her. Though the Petitioner did not allude to this fact though he stated that the marriage cannot be sustained and he had moved on.

17. A marriage is a contract or a solemn union of willing partners, who apart from the normal differences ought to live in harmony and appreciating each other. One spouse cannot be forced on the other.

18. It is noteworthy that the Respondent sacrificed her career, her life and gave all to their union. The Petitioner did not see this but found her quarrelsome and difficult to live with and sought company elsewhere. It is as clear as day light that the marriage between the two no longer hold; it is irretrievably broken down.

19. It is not lost to this court however that the Respondent gave the marriage her best shot, and sacrificed a lot in the name of love, she is left the poorer of the two.

20. Doing the best I can in the circumstances of this case and in the interest of justice I order as follows:

a. The marriage between AP and PAP be and is hereby dissolved.

b. Decree absolute do issue within 90 days.

c. AP the Petitioner is hereby ordered to pay monthly alimony of Kshs.50,000/= to PAP the Respondent for her upkeep unless she re-marries.

d. AP the Petitioner will equally pay the costs of this suit to the Respondent.

DATED, SIGNED AND DELIVERED at NAIROBI THIS 31ST DAY OF JULY ,2019.

ALI-ARONI

JUDGE

In the presence of:

Petitioner

Respondent.....