



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION MILIMANI LAW COURTS

DIVORCE CAUSE NO 195 OF 2013

IN THE MATTER OF THE MARRIAGE ACT

B E T W E E N:

E L I.....PETITIONER

AND

M A A.....RESPONDENT

K O.....CO-RESPONDENT

J U D G M E N T

1. The Court has before it a Petition for the dissolution of a marriage and custody of the Child of the Marriage. The Petition was presented by the Petitioning Husband. The Petition was filed on 4th September 2013. The Respondent filed a “Statement of Defence” which the Court accepts as an Answer on 15th October 2013. On 21st March 2017 the Petitioner withdrew his Petition against the Co-Respondent. By Chamber Summons filed on 23rd March 2015 the Petitioner applied for a Certificate that the pleadings were closed and the matter ready for trial. The Hon DR hearing the matter noted that the Respondent (acting in person) had not signed her “Statement of Defence” but certified the Matter ready for Hearing. It came before this Court for Hearing on 8th February 2018.

2. In its original form the Petition relied on the grounds of adultery and desertion. By the time it was heard (3 ½ years later) the Parties had been separated for more than 3 years. The Petitioner amended his Petition (with the Leave of the Court) to rely on the Ground of 3 years separation. The Court heard oral evidence from both Parties.

3. The Parties were employed in the armed forces when they met and married. They were married on 1st April 2010 at the Office of the Registrar of Marriages in Kakamega. Both were both were military officers stationed within Nairobi being Kahawa and Embakasi respectively. The Petitioner left to further his studies at the instigation of their employer, the [particulars withheld]. The Petitioner returned in July 2010 but the Parties did not resume co-habitation. That is the evidence of both Parties. They did however have one child, who is now 9 years old and maintained by her Mother. The Parties both informed the Court that custody and maintenance were matters they were able to decide themselves.

4. As a consequence of not resuming co-habitation, the Parties have been separated for significantly longer than 7 years. However, they have remained on reasonably good terms and have made the appropriate arrangements for their Child.

5. As stated, the Court heard Oral evidence from both Parties. Neither felt the need to cross-examine the other. There was consensus that they have been separated for a significant period of time and also that the marriage has irretrievably broken down.

6. In the face of the consensus of the Parties that the marriage has irretrievably broken down. That is the finding this Court makes. In the circumstances, the Court Orders that:

1. The Marriage between the Petitioner and Respondent celebrated on 1st April 2010 be and is hereby dissolved
2. There is no order in relation to the Child of the Marriage
3. Each Party to pay its own costs.

Order accordingly,

FARAH S. M. AMIN

JUDGE

Delivered, Dated and Signed at Nairobi this 19th day of April 2018

In the Presence of:

Court Clerk: Patrick

For Petitioner: N/A

For Respondent: M A in person