



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MALINDI**

**DIVORCE CAUSE NO. 3 OF 2017**

**M M.....PETITIONER**

**VERSUS**

**J K M.....RESPONDENT**

**JUDGEMENT**

1. M M, the Petitioner was married to J K M, the Respondent in the office of the Registrar of Marriages at Malindi on 24<sup>th</sup> August, 2013. Thereafter the couple cohabited at various addresses ending up in Jacaranda, Watamu.
2. Through the Petition filed on 21<sup>st</sup> February, 2017 the Petitioner seeks a dissolution of the marriage on adultery and cruelty grounds. It is also said that the marriage has irretrievably broken down. At the time of filing the Petition the Petitioner also filed her signed statement detailing the grounds in support of her prayer for divorce. She also testified and adopted the said statement as evidence.
3. According to the Petitioner, the Respondent soon after the wedding lived a double life, being married to her as well as maintaining a long term relationship with one S with whom he sired two children. The Respondent at the same time also had an affair with another woman. When she confronted the Respondent about his adulterous lifestyle he was so incensed and assaulted her. Among the documents exhibited by the Petitioner is a photograph of the Respondent kissing another woman. The Petitioner also exhibited a bandaged hand stating that she was injured by the Respondent. Also exhibited are copies of two charge sheets in which the Respondent is accused of having assaulted the Petitioner on two separate occasions.
4. The Petitioner accused the Respondent of cruelty stating that he left dead animals in her flowerpots and at one time stuck a knife on a coconut tree growing outside her house. She concludes that she has suffered both physical and psychological torture in the hands of the Respondent.
5. She denied condoning the acts of adultery and cruelty stating that the marriage had irretrievably broken down and asked the court to dissolve it.
6. In an answer to the Petition filed on 7<sup>th</sup> April, 2017, the Respondent denied each and every allegation made by the Petitioner and asked the court to dismiss the Petition with costs. The Respondent in the replying affidavit filed together with the said answer averred that the Petitioner started being violent to him after realizing that prior to their marriage he had sired two children with another lady. He denied placing dead animals in the flowerpots stating that it is most likely that this was done by members of his family who were not happy with the Petitioner for maliciously pressing charges against him.
7. Although the marriage in question was celebrated before the enactment of the Marriage Act, 2014, the applicable law is the Marriage Act, 2014.
8. Section 66(2) of the Marriage Act, 2014 provides the grounds of dissolution of a civil marriage as:

**“(a) adultery by the other spouse;**

**(b) cruelty by 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 marriage.”**

9. In accordance with Section 66(6), 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 a 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 had deserted the other spouse for at least three years immediately preceding the date of presentation of the petition;**

**(f) a spouse has been sentenced to a term of imprisonment 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”**

10. Looking at the law, it is apparent that a petitioner who desires to end his/her marriage on the ground that the same has irretrievably broken down, should state in the petition the grounds for concluding that the marriage is beyond repair. In the instant case, this has not been done thus leaving the two grounds of adultery and cruelty for the consideration of this court.

11. The Respondent did not testify hence leaving his answer to the Petition unsupported by evidence and untested through cross-examination. On her part, the Petitioner exhibited photographs and other exhibits showing that she was assaulted by the Respondent and she reported the matter to the authorities. There was also evidence placed before the court showing the Respondent enjoying good times with another woman therefore leading to the inevitable conclusion that the persons photographed were engaged in an adulterous liaison during the existence of the marriage between the Petitioner and the Respondent.

12. The Petitioner has through her evidence and exhibits succeeded in establishing that the Respondent is an adulterous person who treated her cruelly. Those are grounds for dissolving a civil marriage. Her Petition succeeds and her marriage to the Respondent is dissolved.

13. Considering the nature of these proceedings, I direct each party to meet her/his own costs of the cause.

**Dated, signed and delivered at Malindi this 19<sup>th</sup> day of April, 2018.**

**W. KORIR,**

**JUDGE OF THE HIGH COURT**