



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

FAMILY DIVISION

DIVORCE CAUSE NO. 5 OF 2016

JCM.....PETITIONER

VERSUS

TWK.....RESPONDENT

JUDGMENT

1. JCM the Petitioner married TWK the Respondent on 26.11.10 at the Registrar's Office in Mombasa. Following their marriage the parties cohabited in Malindi where they ran an [particulars withheld] together. The marriage is blessed with 1 child, AW born on 14.3.11.
2. The Petitioner has filed the Petition herein dated 15.2.16, seeking dissolution of the marriage on the ground of cruelty. The Petitioner was on 11.7.11 given a custodial sentence by the Court in Malindi and was released on 15.12.15. During his incarceration, the Respondent cohabited with a man of Asian origin known as NHK. She also cut off all communication with the Petitioner during this period. Further the Respondent abandoned the Petitioner upon his release from prison and continued to cohabit with the said Nabir. The conduct of the Respondent caused him emotional and mental torture and humiliation. The Petitioner prayed for the dissolution of the marriage as well as costs.
3. The matter proceeded as undefended as the Respondent though served with the Petition and Notice to Appear failed to file appearance.
4. In his brief testimony in support of the Petition, the Petitioner reiterated the contents of his Petition. According to him, there is no hope for the marriage as the Respondent continues to cohabit with the said NHK. To him, the marriage has irretrievably broken down.
5. The grounds upon which a civil marriage may be dissolved are stipulated in Section 66(2) of the Marriage Act, 2014 and they include:

- a. adultery by the other spouse;**
- b. cruelty by the 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 the marriage"**

Desertion, cruelty and adultery are statutory grounds for the dissolution of a marriage. From the uncontroverted testimony of the Petitioner, the Respondent cut off all communication and deserted him while in prison and cohabited and continues to cohabit with Nabir Hissein Khan with whom she has committed adultery. All these factors have no doubt occasioned the Petitioner untold mental and emotional anguish. The parties have since their separation not resumed cohabitation. I have no reason to doubt the testimony of the Petitioner and I am satisfied that the grounds of cruelty, desertion and adultery have been established. As a result of the Respondent's conduct the marriage between the parties herein has irretrievably broken down. In the result, I do pronounce a decree of divorce and order that the marriage between the Petitioner and the Respondent **solemnized on 26.11.10 at the Registrar's office in Mombasa** be and is hereby dissolved. Decree *nisi* to issue and the same to be made absolute within 1 month.

DATED, SIGNED and DELIVERED in MOMBASA this 30th day of November 2018

M. THANDE

JUDGE

In the presence of: -

..... **for the Petitioner**

..... **for the Respondent**

..... **Court Assistant**