



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

FAMILY DIVISION

DIVORCE CAUSE NO. 48 OF 2015

N M M.....PETITIONER

VERSUS

G R S.....RESPONDENT

JUDGMENT

1. The marriage between N M M, the Petitioner then a 27 year old woman and G R S, the Respondent then 75 year old man, the parties herein was solemnized on 18.8.11 at the Registrar's Office in Mombasa. Following the marriage the parties cohabited in Mtwapa until July 2015 when they separated. The marriage was not blessed with any children.

2. The Petitioner has filed this Petition dated 10.8.15 seeking dissolution of the marriage. She claims that since the celebration of the marriage the Respondent has treated her with cruelty. He has abused her, physically assaulted her and even threatened her with death thereby causing her suffering and loss of self-esteem. As a result the marriage has irretrievably broken down.

3. The Respondent though served with the Petition and Notice to appear failed to file appearance. The Registrar's certificate was issued on 6.4.17 paving way for the matter to proceed to hearing as an undefended cause.

4. In her testimony in support of the Petition, the Petitioner reiterated the contents of her Petition. She further stated that the Respondent would bring another woman into the matrimonial bed with the intention of all of them having threesome sex. When the Petitioner declined to participate, he assaulted her. She opted to file for divorce. The Petitioner further stated that when the Respondent was served with the Petition, he fled to England and has not returned since. According to the Petitioner, there is no hope for the marriage and she prayed that the same be dissolved so that she could move on with her life.

5. The marriage is a civil marriage having been solemnised at the Registrar's office in Mombasa. 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"

6. Cruelty and the irretrievable breakdown of marriage are statutory grounds for the dissolution of a marriage. From the uncontroverted testimony of the Petitioner, the Respondent treated her with cruelty by physically assaulting her and introducing a third party to their marriage bed. I have no reason to doubt the testimony of the Petitioner. Further, since the parties' separation in July 2015, the parties have not resumed cohabitation. The Petitioner sees no hope for the marriage as the same has irretrievably broken down. In the circumstances, I do pronounce a decree of divorce and order that the marriage between the Petitioner and the Respondent **solemnized on 18.8.11 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. There shall be no order as to costs.

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**