



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

DIVORCE CAUSE NO 2 OF 2018

SS.....PETITIONER

VERSUS

PMP.....RESPONDENT

JUDGMENT

1. The Petitioner **S S** moved this court by way of a Petition on the 23rd of March 2018 against the Respondent herein **P MP** seeking to have the union between her and the respondent annulled. She also sought for costs.
2. It is the Petitioner's case that on the 11th of April, 2017 the two, a spinster and a bachelor then contracted a marriage in Nairobi at the Offices of the Registrar of Marriages and on the 16th of the same month they under went a Hindu marriage ceremony.
3. That both parties are domiciled in Nairobi and the marriage has no issues.
4. In support of the suit the Petitioner cited two grounds and set out elaborate particulars thereof. The Petitioner stated that the marriage lacked the necessary consent of the parties, was fraught with cruelty and was not consummated.
5. The grounds for the divorce were elaborately particularised and may be summarised as follows

Particulars of Lack of consent

The parties met at a mutual friend's wedding and decided to get married after two months of the initial meeting. At the time the Petitioner was 34 years and prospects of marriage were low, her status was also a source of embarrassment to her family and she felt obliged to accept the marriage proposal from the Respondent as this would have also relieved her family of the stigma. That both their families were overjoyed by the prospects of the wedding and pressurised for a quick marriage between the two. Problems between the two started months before the wedding and both made an effort to resolve the problems through pre-marital counselling.

Particulars of non-consummation.

Due to the above and lack of consent on her part the marriage was not consummated.

The Petitioner stated further that the respondent exhibited extreme hostility during the ceremony, treated the Petitioner with cruelty and at the end of the reception the two had an argument where the Respondent took of his wedding ring, left it by the Petitioner's bedside and left the room and the parties slept in separate rooms.

Despite the above the Petitioner travelled to Watamu for the Hindu ceremony reluctantly. While in Watamu immediately after the wedding ceremony they had a bitter exchange and for the three days the parties had bitter exchanges. They travelled to Seychelles for a few days and both were miserable and had several and bitter exchanges.

On return on the 24th of April she informed the respondent of her wish to visit her family and to bid her visitors fare well which angered the respondent and asked her not to return to the matrimonial home. The arguments continued over time and on the 5th of October 2017 the Petitioner returned to her parents' house and the parties have since then stayed apart.

6. The Respondent failed to enter appearance and file a response despite service of the process. Hence on the 19th of July 2018 the suit was certified as an undefended cause and directions given accordingly.

7. At the hearing of the matter the Petitioner affirmed her grounds as stated above stating that the marriage between them had irretrievably broken down as a result. That they had differences which culminated into arguments before and after the marriage, and attempts to receive counselling did not salvage the situation. It was her further evidence that both the parties have moved on since they agreed to go separate ways.

8. The issues before court are whether or not to annul the marriage between the parties herein and who ought to bear the cost of the suit.

9. Considering the evidence before court, the allegation that there was lack of consent cannot hold even though the Petitioner was not sure whether marrying the Respondent was right at the time she got into the union. This she did of her own free will, meaning she did consent to the marriage.

10. However, it is evident that the marriage between the Petitioner and the Respondent was fraught with disagreements, was stressful, the two could not get along and as alleged the said marriage was not consummated and soon thereafter the two parted ways. The two have since moved on with their separate lives. The contention that the marriage was not consummated remains unchallenged.

11. Based on the evidence that the marriage between the parties was not consummated and considering the serious differences between the parties and the fact that they have lived separate since the 5th of October 2017 I find that the marriage between the parties cannot hold as the same has irretrievably broken down. I therefore see no reason not to annul the marriage between the two as desired by them; demonstrated by the deeds.

12. Consequently, the marriage between the Petitioner and the Respondent that was solemnised on the 11th of April 2017 be and is hereby annulled.

13. Each party to meet his/her costs.

DATED, SIGNED and DELIVERED at NAIROBI this 29th DAY OF November, 2018.

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ALI-ARONI

JUDGE