

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MALINDI

DIVORCE CAUSE NO. 8 OF 2015

G F.....PETITIONER

VERSUS

T C M.RESPONDENT

JUDGEMENT

The parties herein entered into a civil marriage on 3rd December, 2012 before the registrar of marriage, Malindi. On 29th April, 2015 the petitioner filed this petition seeking to have the marriage dissolved. On 8th April, 2016 the respondent filed his answers to the petition. The respondent also pleaded to have the marriage dissolved. During the hearing of the petitioner, the petition relied on the petition and her witness statement while the respondent relied on his answer to the petition.

The grounds upon which this petition was filed are adultery and cruelty. The petitioner maintain that the respondent was living a double life. While married to the petitioner, the respondent was maintaining a long-term relationship with another woman by the name S. In October 2014, the respondent went with S to Watamu and they stayed together for a number of days. That relationship continued until when S returned to Italy.

On the issue of cruelty, it is stated that whenever the petitioner questioned the respondent about his adulterous relationship, the respondent would be incensed and physically assault the petitioner. At one time on 11th December, 2014 the respondent pushed the petitioner against the wall. On 13th December 2014, the respondent, while drunk, brandished a Panga threatening to hurt the petitioner. On 17th December, 2014 the respondent assaulted the petitioner and the matter was reported to the Diani Police: The respondent was charged in court with the offence of causing actual bodily harm contrary to section 251 of the penal code. (Kwale Criminal Case No. 214/2015). The respondent pleaded guilty and was sentenced to serve four (4) months imprisonment. Since that time the parties have lived separately.

In his answer to the petition, the respondent states that the relationship between the respondent and the petitioner has irretrievably broken down and no reconciliation can be reached.

Section 66 of the marriage Act No. 4 of 2014 provides that a party to a civil marriage can petition the court for the dissolution of the marriage on grounds of adultery or cruelty or if the marriage has irretrievably broken down. The petitioner maintains that she was subjected to cruelty and was physically abused. Since December 2014, the two have lived separately. Section 66 (b) (d) provides that a marriage has irretrievably broken down if the spouses have been separated for at least two years. It is evident that from January 2015 to date, the parties have lived separately.

Given the pleadings and each parties statement, it is clear that each party would like to go on his or her own separate way. No amount of attempts to reconcile the two can yield positive results. It is a fact that there is no longer love between the two and they are living separately as if the marriage does not exist. That being the case, I do find that the marriage has irretrievably broken down. Parties cannot reconcile.

In the end, I do find that the petitioner has proved her case. There is proof that she was physically assaulted by the respondent. That amounts to cruelty. The respondent is also in favour of the dissolution of the marriage. The marriage between the parties herein is hereby dissolved. A decree nisi to issue and the same to become absolute after a period of thirty (30) days. Parties shall meet their own respective costs.

Dated, signed and delivered in Malindi this 23rd day of February, 2017.

S.J. CHITEMBWE

JUDGE