



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAKURU

DIVORCE CASE NO.12 OF 2015

C M M.....PETITIONER

VERSUS

P M N.....RESPONDENT

JUDGMENT

Background

1. A certificate of marriage issued by the Superintendent Registrar's office under the Marriage Act (Cap 150 Laws of Kenya) confirms that C M M (hereinafter the petitioner) got married to P M N (hereinafter the respondent) on the 19/12/1997. The said marriage seems to have encountered headwinds along the way giving rise to this petition.

The Petition

2. By way of a petition dated 17th November 2014, the petitioner seeks orders;

- (a) **THAT** the marriage between the petitioner and the respondent be dissolved.
- (b) Cost of this petition.
- (c) **ANY** other relief this Honourable Court may deem fit to grant.

3. The petition is based on grounds of desertion and cruelty particulars of which are;

- (a) The respondent has completely deserted the petitioner and chased her away from the matrimonial home on or about the year 2010 with absolutely no intention of accepting her back and the petitioner asserts that they have never lived together since then.
- (b) **THAT**, the petitioner also asserts that the respondent has been cruel to her and physically assaulted her on various occasions.

FULL PARTICULARS OF CRUELTY, AND PHYSICAL ASSAULT

- (a) The respondent is rebellious, inconsiderate and abusive.
- (b) The respondent is quarrelsome and vindictive to the petitioner.

- (c) The respondent has completely denied the petitioner access to the three issues of the marriage.
- (d) The respondent has been issuing threats to the petitioner and at one point in time, the petitioner was forced to report the matter to the law enforcement agencies for fear of her life.
- (e) Through his said conduct, the respondent has subjected the petitioner to mental torture and/or hardship and the petitioner has gone through a lot of distress.
- (f) Being very rude, abusive and insulting the petitioner in the presence of other people, the issues of the marriage, relatives, house help, their family friends, inciting her workers at her business premises (salon) initially situated at Uchumi Nakuru Business Center causing to close it down.
- (g) Acting in an open defiant and indifferent manner to the respondent even in the presence of the issues of marriage thereby occasioning the respondent shame, ridicule, anxiety, depression and embarrassment.
- (h) Talking ill of the respondent to family members, relatives and friends with the sole purpose of lowering the respondent's self esteem and reputation by labeling her a prostitute.
- (i) Being emotionally crude and verbally abusive to the respondent.
- (j) Harassing the children of the said marriage by asking them to choose which parent they would like to live with the same has caused the children of the marriage emotional distress causing them to constantly break down to tears and dropping out of school.
- (k) Causing bodily harm and physically abusing her.
- (l) The respondent is a person with a violent temper and intemperate disposition who has since the celebration of the marriage thrived on threatening, harassing and physically assaulting the respondent.
- (m) The petitioner had continuously prevented and/or refused the respondent from searching for a job and insisted on her staying at home yet it was the job that she was doing that was feeding the family.
- (n) Rejecting all the attempts to reconcile the marriage and insisting that only his will must prevail for the marriage to work.

4. It is the petitioner's case that the marriage has irretrievably broke down and all efforts to revive it have not borne fruit.

Answer to petition

5. In answer to the petition; the respondent denies that he chased the petitioner away from their matrimonial home. It is the petitioner who on her own volition left the matrimonial home to go and serve her ministry on a full time basis alleging the respondent was a hindrance to the same.

6. It is the respondent's case that the first 9 years of the marriage were good upto the year 2006. The years between 2006 and 2010 were hell on earth and the years 2010 to 2015, the respondent has enjoyed some calm in the marital storm.

7. The respondent admits to some quarrels in the marriage but denied the particulars of cruelty set out by the petitioner.

8. The parties have lived separately since 2010. However, separation was even longer as the petitioner had deserted the matrimonial bed much earlier. The respondent has singlehandedly raised the children of

the marriage without assistance or contribution from the petitioner.

9. The petitioner is accused of being abusive, cruel, wasteful, inconsiderate, a poor mother, a poor and wasteful business woman, demeaning and flirting with strange men, unsupportive and an unreliable co-parent.

10. The respondent agrees that the marriage has irretrievably broken down.

The evidence

11. In oral testimonies both parties buttressed the allegations in the respective petition and answer to petition. The petitioner accused the respondent of battering her when she was pregnant with the 2nd born child in 1998. The respondent used to claim that the petitioner was not taking care of children who had been left by another wife. The respondent chased her away and attempts by parents to reconcile them were in vain.

12. The respondent testified that the petitioner had offending SMS text messages on her phone. He has been taking care of the children left behind by the petitioner. They have not lived together since 2010. The marriage cannot be salvaged. The petitioner claims to be a preacher but her actions show otherwise. The respondent seeks dissolution of the marriage.

Analysis and Determination

13. I have considered the petition and the answer to petition. I have put into account the oral evidence on record. Of determination is whether the marriage herein has irretrievably broken down.

14. There is ample evidence that things turned sour in the marriage along the way. Efforts on reconciliation came to nought.

The parties have lived separately for 7 years or thereabouts. Their position on the matter as expressed in their evidence and clearly demonstrated in their demeanour shows that the marriage herein is irretrievably broken down. Any attempt to keep these 2 adults together would be a counterproductive exercise as there appears no iota of emotional attachment remains as between the two.

15. Consequently I must find and hold that the marriage herein has irretrievably broken down. The marriage between the petitioner and the respondent is hereby dissolved. In the circumstances of this case each party is to bear its own costs.

Dated, Signed and Delivered at Nakuru this 28th day of March, 2017.

A. K. NDUNGU

JUDGE