



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA

FAMILY DIVISION

DIVORCE CAUSE NO. 35 OF 2016

M O E.....PETITIONER

VERSUS

M K.....RESPONDENT

JUDGMENT

1. In her Petition dated 18.8.16, the Petitioner M O E seeks the dissolution of his marriage to M K. **The marriage was solemnized in Mombasa on 21.6.03.** The Petitioner produced marriage certificate serial number [particulars withheld] as proof of the fact of the marriage. Following the marriage the couple cohabited at [particulars withheld]. The marriage was blessed with 2 children, E K born on 3.8.95 and E W born on 27.11.05.

2. The ground for divorce is that the marriage has irretrievably broken down. There was communication breakdown between the parties from 2012 and that by 2015 the marriage had essentially collapsed. All efforts at reconciliation by family friends and the church came to nought. She prayed for the dissolution of marriage. She also prayed for custody of their minor child E W, school fees and monthly maintenance at Kshs. 20,000/=.

3. In his Answer to Petition dated 18.1.17, the Respondent states that there was a breakdown in communication between both parties. That the Petitioner denied the Respondent conjugal rights and suspected him of having affairs with other women. He too prayed that the marriage be dissolved and asked that maintenance for the child be shared equally.

4. At the hearing both parties adopted their respective pleadings. They both testified that there was no hope for the marriage. That all efforts at reconciliation had failed. They prayed for the marriage to be dissolved. Both agreed to contribute equally to the maintenance of the minor child of the marriage

5. I have considered the Petition, Answer to Petition and the brief testimony of the Parties. The marriage herein is a Christian marriage having been solemnised in Mombasa. The Marriage Act, 2014 at Section 65(e) provides that the irretrievable breakdown of the marriage is one for the grounds upon which a Christian marriage may be dissolved.

6. With the enactment of the Marriage Act 2014, the Court no longer requires parties to adduce evidence sufficient to prove the commission of a matrimonial offence by one spouse against the other. All that a party needs to do is satisfy the Court that the marriage has irretrievably broken down. This was well articulated by Odero, J. in C.W.L v H.N [2014] eKLR thus:

“Prior to the Marriage Act 2014, the court would have required either the petitioner or the respondent to adduce evidence sufficient to prove the commission of a matrimonial offence by one spouse against the other. However in the Marriage Act 2014 the situation is vastly different. All the court requires is proof that the marriage has irretrievably broken down.”

7. From the testimony of the parties, I am satisfied that the marriage herein has irretrievably broken down. The parties themselves have stated that the marriage cannot be salvaged. In the circumstances, I pronounce a decree of divorce and order that the marriage solemnised on 21.6.03 in Mombasa, be and is hereby dissolved. Decree *nisi* to issue and the same to be made absolute within 1 month. Each party shall bear its own costs.

DATED, SIGNED and DELIVERED in MOMBASA this 24th day of March 2017.

M. THANDE

JUDGE

In the presence of: -

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

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

.....**Court Assistant**