



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA

FAMILY DIVISION

DIVORCE CAUSE NO. 16 OF 2016

E B.....PETITIONER

VERSUS

L C.....RESPONDENT

JUDGMENT

1. E B the Petitioner herein married L C the Respondent herein on 24.8.91 at the *particulars withheld* Church in Kwale County. The Petitioner has filed the Petition herein dated 15.3.16, seeking the dissolution of their marriage. The ground upon which the Petitioner seeks divorce is adultery.

2. Although the Respondent was served with the Petition and Notice to Appear, she failed to file appearance. The matter therefore proceeded as an undefended cause.

3. In his brief testimony in support of his Petition, the Petitioner stated he lives in Mariakani where he works as a *particulars withheld*. The marriage between him and the Respondent was solemnized on 24.8.91 at the *particulars withheld* Church **and they were issued with a marriage certificate. A certified copy of the marriage certificate serial number *particulars withheld* was produced as proof of the marriage. Following the marriage, the couple cohabited in Malindi and they lived together in harmony. They have 2 adult children, F M B born in 1986 and C M born in 1990. After some time of cohabitation however, the Respondent's conduct changed. She denied the Petitioner conjugal rights.**

4. **The Petitioner further stated that in 1992, he was transferred to Mariakani but the Respondent refused to move there with him. He moved with the children and brought them up. They are now adults. During this time the Respondent got involved in adulterous affairs with other men. She even got a child with one L M in 2001. The Petitioner further stated that he lives with another woman and they have a child born in 2002. He prayed for the dissolution of the marriage.**

5. From the testimony of the Petitioner, it is evident that the marriage herein has irretrievably broken down. The grounds upon which a Christian marriage such as the marriage herein may be dissolved are stipulated in the Marriage Act, 2014 at Section 65. These include:

(a) one or more acts of adultery committed by the other party;

(b) cruelty, whether mental or physical, inflicted by the other party on the petitioner or on the children, if any, of the marriage;

(c) desertion by either party for at least three years immediately preceding the date of presentation of the petition;

(d) exceptional depravity by either party;

(e) the irretrievable breakdown of the marriage”

6. The Petitioner seeks dissolution of the marriage on the ground of adultery. The Respondent committed acts of adultery and even has a child with one L M. From the Petitioner’s own testimony he too has committed adultery and has a child with another woman. This is a classic case of the pot calling the kettle black! It would appear that there is no hope for this marriage which has irretrievably broken down. Both parties are in adulterous relationships with other people, their marriage vows notwithstanding. They have been apart since 1992 and have not resumed cohabitation.

7. In view of the foregoing, I do pronounce a decree of divorce and order that the marriage between the Petitioner and the Respondent **solemnized on** 24.8.91 at the *particulars withheld* Church be and is hereby dissolved. Decree *nisi* to issue and the same to be made absolute within 1 month. Each party to bear own costs.

DATED, SIGNED and DELIVERED in MOMBASA this 19th day of May 2017

M. THANDE

JUDGE

In the presence of: -

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

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

.....**Court Assistant**