



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

DIVORCE CAUSE NO. 144 OF 2011

J W S.....PETITIONER

VERSUS

M P K.....RESPONDENT

JUDGEMENT

1. Marriage was celebrated between the parties herein on 5th January 1996 at the District Commissioner's Office, Kiambu. A certificate of marriage serial number [Particulars Withheld] was issued to them in accordance with the Marriage Act, Cap 150, Laws of Kenya (now repealed). The parties cohabited thereafter at LR No. [Particulars Withheld] Mushrooms Road, off Kiambu Road, Kiambu County, Kenya. The couple was blessed with issue, two children – B T S (born on 24th May 1992) and S K S (born on 19th January 1998).

2. It is pleaded that since the celebration of the marriage the respondent has committed adultery with prostitutes, drinks heavily and deserted the matrimonial home in 2010. She accuses him of being responsible for the breakdown of the marriage, and of causing her grief and distress amounting to cruelty. She would like the marriage dissolved, custody of S K S, settlement school fees for the said younger child, alimony after decree *nisi* and maintenance of the younger child.

3. The divorce petition was served on the respondent on 3rd October 2011. He swore an affidavit of means on the same date, disclosing his income and detailing his expenses. He also filed an answer to the petition and a cross-petition of even date. He denies the allegations made against him in the petition, and puts the petitioner to strict proof. In his cross-petition, he accuses her of adultery with a named person, and blames her for the breakdown of the marriage. He also accuses her of cruel nagging and verbal abuse. He prays for the dissolution of the marriage, joint custody of the children, and costs. He pleads that the petitioner is not entitled to alimony.

4. The petitioner filed a reply to the answer and an answer to the cross-petition. She denies committing adultery as alleged by the respondent. She also denies the alleged cruelty. She then proceeds to make further allegations of cruelty against the respondent. She accuses him of getting into marriage on the basis of false allegations that he was a bachelor, whereas he had previously married twice, and says that he has admitted to indulging in an adulterous relationship with another woman since the commencement of these proceedings.

5. The respondent filed a rejoinder to the answer to his answer and answer to cross-petition. The rejoinder is dated 14th March 2012. He denies the allegations made against him, and reiterates that the petitioner

had committed adultery with a specified Russian man, whose name I shall not recite given that he has not been made a co-respondent. .

6. On 19th September 2013, the Deputy Registrar cleared the petition to proceed as defended.

7. The petition was amended vide orders recorded by the court on 24th September 2015. The amendments removed the allegations relating to adultery and cruelty, and anchored the petition on the general ground that the marriage had irretrievably broken down, among other changes. A fresh registrar's certificate was issued by orders made on 21st January 2016. Thereafter both sides filed detailed affidavits of means.

8. On 19th January 2017, the parties agreed by consent not to lead evidence on alimony and maintenance but to leave it to the court to determine the matter on the basis of the affidavits of means, that each party would bear their own costs, and that the court would proceed on the basis of the amended petition dated 9th October 2015. The answer to the petition and the cross-petition were marked as withdrawn.

9. The Petitioner testified on 19th January 2017. Her testimony gave vent to the allegations made in her amended petition. She added though that they separated in 2010 when she asked the respondent to leave the matrimonial home, which belonged to her father, after an acrimonious violent argument. She asserted that they needed to be given liberty to move on.

10. From the material placed before me it is plain that the marital relationship between the petitioner and the respondent has totally broken down. I have noted that cohabitation has been broken, and parties have been apart since 2010. The marriage no doubt has practically come to an end.

11. I have been invited to make orders on alimony or maintenance of the petitioner by the defendant. Both have indicated that they are working and earning their keep. However, whereas the petitioner has displayed material on what she has been spending on the education of the younger child, she has not placed any material before me on what her income is. I cannot begin to task the defendant with her maintenance without her first establishing that she has no income of her own or that her income is insufficient for her needs. That is a condition precedent.

12. I note that the parties live separately. The petitioner lives on her father's property off Kiambu Road, while the respondent is in rented premises in the [Particulars Withheld] of Nairobi. Each party appears to be self-sufficient. Each party has a duty to support themselves, and they appear to be sufficiently taking care of themselves. I am not persuaded that I should make any orders on maintenance.

13. I note too that the children are all adults. Each of the parties lives with one of the children, and is responsible for their welfare. The issue of their custody should not arise given that they are both adults. I have not been invited to extend parental responsibility beyond the age of majority.

14. In the circumstances, I am moved to make the following final orders:-

(a) That the marriage between the petitioner and the respondent, celebrated on 5th January 1996, is hereby dissolved;

(b) That decree nisi shall issue forthwith, to be made absolute after thirty (30) days; and

(c) That there shall be no order as to costs.

DATED, SIGNED and DELIVERED at NAIROBI this 29TH DAY OF SEPTEMBER, 2017.

W. MUSYOKA

JUDGE