



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA
FAMILY DIVISION
DIVORCE CAUSE NO. 48 OF 2014

J C C..... **PETITIONER**

VERSUS

S E H.....**RESPONDENT**

JUDGMENT

1. The Petitioner J C C has filed this Petition dated 14.5.14 seeking the dissolution of his marriage to the Respondent S E H. **The marriage was solemnized at the Registrar's Office in Mombasa on 30.1.10 and has no issues.** The Respondent despite of service of the Notice to Appear and the Petition failed to put in any appearance. The matter therefore proceeded as an undefended cause.
2. The ground for divorce as stated in the Petition is cruelty on the part of the Respondent. That since the celebration of the marriage the Respondent has treated the Petitioner with cruelty. The particulars of cruelty are set out in paragraph 6 of the Petition and include mental torture by disagreeing with anything the Petitioner says; despising the advice given to her by the Petitioner; failing to fulfil her obligations as a wife to the Petitioner. The Petitioner avers that as a result of the Respondent's above conduct, the Petitioner's standing has been lowered in the eyes of his parents and friends and he has lost respect. He states that the marriage has irretrievably broken down and prays that the same be dissolved.
3. The Petitioner testified in court that he and the Respondent got married on 30.1.10 at 27 at the Registrar's Office in Mombasa. Following their marriage, the couple cohabited in Mtwapa, Mombasa but were not blessed with any children; that the Respondent left the matrimonial home in 2013 and returned to the United Kingdom her home country and has not returned since; that the Respondent is of ungoverned anger and subjected the Petitioner to cruelty; that she did not fulfil her obligations as a wife; that she made the Respondent lose respect among his family members and friends due to her abusive and humiliating conduct; that because she despised his opinion, they were unable to plan their life together as a married couple; that attempts at reconciliation were made in July 2013 but to no avail; that the marriage has no future as it has irretrievably broken down. He prayed that this Court grants him divorce.
4. I have considered the Petition and the uncontroverted testimony of the Petitioner. The facts herein are that the Petitioner and the Respondent married at the Registrar's Office in Mombasa on 30.1.10. The marriage certificate serial number 161108 is sufficient proof of the fact of the marriage. After the marriage the two cohabited as man and wife in Mombasa for about three years but were not blessed children. From the evidence of the Petitioner, the Respondent subjected him to cruelty in that that she did not fulfil her obligations as a wife; that she made the Respondent lose

respect among his family members and friends due to her abusive and humiliating conduct; that because she despised his opinion, they were unable to plan their life together as a married couple. The Respondent left the matrimonial home in 2013 and has never returned.

5. The Marriage Act, 2014 at Section 66(2) provides for the grounds upon which a civil marriage may be dissolved. These include:

- a. **adultery by the other spouse;**
- b. **cruelty by the other spouse;**
- c. **exceptional depravity by the other spouse;**
- d. **desertion by the other spouse for at least three years; or**
- e. **the irretrievable breakdown of the marriage”**

6. In his Petition and in his evidence which remains uncontroverted, the Petitioner cites the ground of cruelty on the part of the Respondent. He states that the Respondent did not fulfil her obligations as a wife; that she made the Respondent lose respect among his family members and friends due to her abusive and humiliating conduct; that because she despised his opinion, they were unable to plan their life together as a married couple; that since the Respondent left the matrimonial home in 2013, she has not returned and still remains in the United Kingdom. All these acts of the Respondent have caused the Petitioner mental and emotional anguish and have resulted in the irretrievable breakdown of the marriage. I find that the treatment that the Respondent subjected the Petitioner to amounts to cruelty.

7. The Petitioner and the Respondent have lived apart since 2013. All efforts at reconciliation made in 2013 failed and no further attempt has been made since then. Neither of the parties is interested in the marriage. The marriage is therefore virtually non-existent. Accordingly, I pronounce a decree of divorce and order that the marriage solemnised at the Registrar’s Office in Mombasa on 30.1.10 be and is hereby dissolved. Decree *nisi* to issue and the same to be made absolute in 1 month. Each party to bear its own costs.

DATED, SIGNED and DELIVERED in MOMBASA this 26th day of JANUARY, 2016.

M. THANDE

JUDGE

In the presence of: -

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

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

..... **Court Assistant**