



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA
FAMILY DIVISION
DIVORCE CAUSE NO. 35 OF 2014

N PPETITIONER

VERSUS

P N V P.....RESPONDENT

JUDGMENT

1. The Petitioner **N P V G** has filed this petition dated 15.5.14 seeking the dissolution of his marriage to the Respondent **P N V P**. He prays that the guardianship, custody and control, maintenance and upkeep of the issues of the marriage be given to the Respondent. He also prays for access to the issues of the marriage. The Respondent filed a Memorandum of Appearance but thereafter failed to put in an answer to the Petition. The matter therefore proceeded as an undefended cause.

2. The ground for divorce as can be gleaned from the Petition is the irretrievable breakdown of the marriage, the particulars of which are set out in paragraph 10 of the Petition. The Petitioner testified in court that he and the Respondent got married on 5.8.94 at the Shree Visa Oshwal in Nairobi. Following their marriage, the couple cohabited in Mombasa for eight years where their first daughter Y was born. Thereafter in 2002, the Respondent secured a job in South Africa and the family relocated there. While in South Africa, the Petitioner who describes himself as “not highly qualified” was unable to secure employment. He therefore remained at home doing the household chores and taking care of their daughter while the Respondent worked.

3. The Petitioner claimed that they began drifting apart as the Respondent focused more on her career than on the marriage. That in 2007 the Respondent got another job in the United Kingdom where she moved with their daughter. As the relationship was strained, the Petitioner remained in South Africa where the Respondent paid his rent and for his upkeep. The Petitioner further testified that after about nine months the Respondent in pursuit of her dreams got another more lucrative job in Singapore and the family moved there despite their differences; that while in Singapore they had another daughter, A. The Petitioner was still unable to secure employment and was totally dependent on the Respondent; that their social circles were completely different; that he was not able to put up with the high lifestyle of the Respondent and the gap in their marriage kept widening; that as the Respondent was busy pursuing her career advancement the Petitioner became a “househusband” and was unable to take care of his family causing him anguish and mental torture.

4. It is the Petitioner’s testimony that it reached a point when he could not take it anymore and he returned to Kenya; that they have lived apart for the last seven years and only communicate about the children;

that efforts to reconcile them have failed. He prayed that the marriage between him and the Respondent be dissolved.

5. I have considered the Petition and the uncontroverted testimony of the Petitioner as well as the written submissions filed by the Petitioner. The facts herein are that the Petitioner and the Respondent married on 5.8.94 at the Shree Visa Oshwal in Nairobi. The marriage certificate serial number *[particulars withheld]* is sufficient proof of the fact of the marriage. After the marriage the two cohabited as man and wife in Mombasa, South Africa and Singapore. The marriage is blessed with two children. The first child was born in 1997 in Mombasa while the second child was born in Singapore in 2008. The Respondent is a university graduate and worked as *[particulars withheld]* while the Petitioner has an 'O' level certificate and while the couple lived in Mombasa the Petitioner was engaged in the family business.

6. The genesis of the problems in the marriage can be traced to the relocation of the family to South Africa where the Respondent secured a well-paying job. As the Petitioner could not secure a job due to his limited qualifications, he was relegated to the role of a househusband, totally dependent on the Respondent. The Respondent on the other hand focussed on her career at the expense of the marriage. Her lifestyle and circle of friends changed and the couple drifted apart. Her subsequent move to the United Kingdom and thereafter to Singapore in pursuit of her career dreams and advancement made the situation worse. The fact that the Petitioner as the head of the home was unable to provide for his family and was totally dependent on the Respondent caused him anguish and mental torture. The Respondent on the other hand appeared to choose career over the marriage. As a result of this state of affairs, the Petitioner has filed this Petition seeking a divorce.

7. In his Petition and in his evidence the Petitioner states that the marriage has irretrievably broken down. The Marriage Act, 2014 at Section 66(6) provides that a marriage has irretrievably broken down if *inter alia*:

(a) ...

(b) a spouse is cruel to the other spouse or to any child of the marriage;

(c) a spouse willfully neglects the other spouse for at least two years immediately preceding the date of presentation of the petition;

(d) the spouses have been separated for at least two years, whether voluntary or by decree of the court, where it has;

(e) a spouse has deserted the other spouse or at least three years immediately preceding the date of presentation of the petition;

(f) ...

(g) ...

(h) ...

8. The Petitioner in the Petition and in his uncontroverted evidence claims that the Respondent was so consumed in her career advancement that she did not care about the marriage. She caused the family to move to the countries where she secured jobs without caring about the consequences of the Petitioner not being able to secure employment. To this extent, the Respondent has been cruel to the Petitioner and has neglected him. Further the Petitioner and the Respondent have been separated for a period exceeding 2 years. I find that the ground of irretrievable breakdown of the marriage has been proved.

9. It is clear from the foregoing that the marriage herein has irretrievably broken down. Accordingly, I pronounce a decree of divorce and order that the marriage solemnised at the 5.8.94 at the Shree Visa Oshwal in Nairobi be and is hereby dissolved. Decree *nisi* to issue and the same to be made absolute

within 1 month. That the matter of the children's custody and maintenance shall be placed before the Children's Court for determination. Each party shall bear its own costs.

DATED, SIGNED and DELIVERED in MOMBASA this 25th day of January, 2016.

M. THANDE

JUDGE

In the presence of: -

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

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

..... **Court Assistant**