



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 158 OF 2014

BETWEEN

C I MPETITIONER

AND

V M NRESPONDENT

JUDGEMENT

1. The Petitioner then a spinster and the Respondent then a bachelor were celebrated a civil marriage on 21st December, 2012 at the Registrar's Office in Nairobi. A certificate of marriage serial Number [*particulars withheld*] was issued to them in accordance with the **Marriage Act (Cap 150 Laws of Kenya)**. The couple thereafter, cohabited in Sigona, Garden Estate and Ngumba Estate respectively as husband and wife. They are domiciled in Kenya and were not blessed with any issue of the marriage.
2. The Petition filed on 16th July 2014 is premised on grounds of desertion, adultery, fraud and cruelty by the Respondent as particularised in the Petition. The Petitioner stated that she and the Respondent cohabited after their marriage. During the subsistence of the marriage she discovered that the Respondent was having an intimate extra marital relationship with a woman who used to answer the Respondent's phone every time the Petitioner called him.
3. The Petitioner states that on or about 7th June, 2013 the Respondent packed his belongings and left the matrimonial home to an unknown destination and since then the Respondent does not answer her calls. In the particulars of fraud and deceit the Petitioner paints a villainous picture of the Respondent. She states that during the subsistence of the marriage, the Respondent has been a cheat, and a liar and has defrauded the Petitioner and other members of the society.
4. The Petitioner provided particulars of the Respondent fraudulent and deceitful acts. The Petitioner stated that the Respondent lied to her that he worked with a company called ASL in Industrial Area Nairobi, a fact which was disproved when the Respondent withdrew some money from the Petitioner's account without her knowledge and investigations revealed that he had never been and was not an employee of the said company.
5. That without her knowledge, the Respondent withdrew and squandered an amount of Kshs.350,000/= being the funds for their wedding preparations, which were deposited in the Respondent's bank account, forcing the Petitioner to source funds from elsewhere to fund the wedding. That in another instance the Respondent took the Petitioner's ATM card and used it to withdraw Kshs.10,000/= from her account without her knowledge.

6. The particulars of cruelty as particularised in the petition are that the Respondent always came home very late in the night without explaining where he had been for the better part of the night. That the Respondent has uncontrolled temper and on many occasions physically assaulted the Petitioner in the presence of relatives. That he has failed to discharge family responsibilities.
7. The Petitioner states that due to the aforesaid acts of cruelty and unfaithfulness they cannot continue to hold out as husband and wife. She, has therefore, asked the court to dissolve the marriage contracted between herself and the Respondent. She confirms that this Petition has not been presented or prosecuted in collusion with the Respondent, nor has she connived or condoned the acts of desertion, adultery, fraud, cruelty and unfaithfulness complained of. She prays that the court do grant an order restraining the Respondent from molesting, assaulting or otherwise harassing her. She also certifies that there have been no previous proceedings filed regarding the marriage.
8. On 29th September, 2015 the Deputy Registrar certified that the matter was suitable to proceed for hearing as an undefended cause for one day in Nairobi. The Respondent had been served with the Notice dated 15th July 2014 to appear, but he did not appear or file an answer to the Petition. At the hearing on 4th February, 2016 the Petitioner testified and reiterated what she had set out in the Petition. The Respondent did not attend court to testify.
9. I have perused the grounds of the petition and the evidence of the Petitioner in the verifying affidavit sworn on 1st July, 2014. Under **Section 66(2)** of the **Marriage Act** a party to a marriage celebrated under Part IV thereof may only petition the court for the separation of the parties or the dissolution of the marriage on the following grounds—

Section 66(2):

- 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.**

From the foregoing I find that the Petitioner has proved the matrimonial offences set out in **section 66(2) (b)(c) (d) and (e)** against the Respondent.

10. The acts of physical assault and stealing money from his own family were not only cruel but point to exceptional depravity on the part of the Respondent. The parties have also lived apart for the last three years and the Petitioner's attempts at reconciliation have been repulsed by the Respondent. It is therefore evident that the marriage celebrated between the parties herein on 21st December, 2012 has irretrievably broken down and cannot be salvaged.
11. In the premise, I find that the petition has merit and is allowed with the following orders:
 - a. That the marriage celebrated between the Petitioner and Respondent at the Registrar's office in Nairobi on 21st December 2012 is hereby dissolved.
 - b. That Decree nisi dissolving the said marriage is hereby issued to be made absolute thirty (30) days from the date of this judgment.

- c. That the Respondent is hereby restrained from molesting, assaulting or otherwise harassing the Petitioner.
- d. There shall be no orders as to costs.

SIGNED DATED and DELIVERED in open court this **25th** day of **February 2016**.

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L. A. ACHODE

JUDGE

In the presence ofAdvocate for the Petitioner

In the presence ofAdvocate for the Respondent