

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MALINDI
DIVORCE CAUSE NO. 17 OF 2014

R.K.M.....PETITIONER

=VERSUS=

H. K. K.RESPONDENT

J U D G M E N T

The Petitioner and the respondent got married on the 17th April 1999. the marriage was solemnised at Mida under the African Christian Marriage and Divorce Act, Chapter 151 laws of Kenya. The marriage was not blessed with any child. On 16th September 2014, the petitioner filed the current petition seeking divorce on the grounds that the respondent has been cruel to her. In his reply to the petition, the respondent denied the allegations of cruelty and stated that the marriage has irretrievably broken down. He is accusing the petitioner as having been adulterous and got a child with another man.

The petitioner informed the court that the two were married for twelve years. They separated in 2010. The respondent left Watamu where they were living and went to live in Malindi. At times the respondent would go to Watamu and harass her. In one occasion, the respondent threatened her with a panga. The parties had bought a plot at Matsangoni. They have a nine roomed house at Watamu. The relationship has broken down and they no longer talk to each other. Due to the long period of separation, she got a daughter recently with another man. It is her evidence that the marriage has broken down.

On his part, the respondent testified that he left Watamu for Malindi due to constant allegations by the petitioner that he was sleeping with other people's wives. The petitioner was summoned by the Gede chief to substantiate the allegations but she could not. She withdrew the allegations. Soon thereafter, the petitioner alleged that the respondent was having a relationship with a pastor's wife. The pastor is also a teacher and he approached the respondent. The respondent's life was in danger and he went to live at Malindi.

It is the respondent's evidence that the petitioner has given birth to a child. He is not the father of the child. He too would like to have the marriage dissolved. He has been operating a taxi business while the petitioner is a teacher.

Given the evidence on record, it is clear to me that the marriage between the parties is beyond redemption. The parties have been living separately for over five years. The petitioner is now a mother and would not be willing to go back to the respondent. Similarly, the respondent would not like to take a woman who has given birth to a child with another man while married to the respondent.

The relationship between the two parties cannot be reconciled. Each party has decided to move on with his/her life. I do find that the petitioner has proved her case and the marriage ought to be dissolved. Equally the respondent has proved that the petitioner was having an adulterous affair with another man.

In the end, I do find that the marriage between the two parties has broken down irretrievably. The marriage is hereby dissolved. A decree nisi to issue. Each party to meet their own costs.

Dated and delivered in Malindi this 23rd day of February 2016

S.CHITEMBWE

JUDGE