



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 70 OF 2015

BETWEEN

A V G... ..PETITIONER

AND

A A GRESPONDENT

JUDGEMENT

1. On 25th January, 1980 the Petitioner then a bachelor was lawfully married to the Respondent then a spinster under the Hindu Customary Law at the Shri Swatamber Murti Puduk Kunvarbai Nathu Deva Jain Dharwashala, Jamnagar, Gujerat, India, and they were issued with memorandum of marriage. The couple thereafter, cohabited in Oshwal Colony, Jamnagar, India between January 1980 March to 1982 before they came to Kenya and cohabited in Ngara and Parklands respectively, in Nairobi until December 2010. They are domiciled in Kenya and were blessed with two issues of the marriage, R A S and K A S who are all adults and married.
2. The Petition filed on 30th April, 2015 is premised on grounds of desertion and cruelty by the Respondent. The Petitioner states that differences arose between them in the year 2010, as the Respondent could no longer stand the Petitioner's habit of relaxing over an alcoholic drink after a day's hard work. As a result the Respondent on 20th December, 2010 moved out of the matrimonial home to live on her own and had not returned to the home at the time of hearing this matter in January of 2016.
3. The Petitioner also states that the Respondent's recalcitrant attitude not only caused him to live on take way meals but also caused him stress and strain and deprived him of the congeniality of a married life. In the verifying affidavit, he averred that what he had set out in the grounds of Petition was true.
4. The Petitioner states that due to the aforesaid act of desertion and cruelty they cannot continue to hold out as husband and wife and has therefore, asked the court to dissolve the marriage contracted between himself and the Respondent. He confirms that this Petition has not been presented or prosecuted in collusion with the Respondent, nor has he connived or condoned the act of desertion complained of. He also certifies that there have been no previous proceedings filed regarding the marriage.
5. The Respondent who was served with the Notice and the Petition on 20th June 2015 as evinced by the affidavit of service dated and filed on 28th May 2015, did not appear or file an answer to the Petition. On 15th October, 2015 the Deputy Registrar certified that the matter was suitable to proceed for hearing as an undefended cause for one day in Nairobi. At the hearing on 28th

January, 2016 the Petitioner testified and reiterated what he had set out in the Petition. The Respondent did not attend court to testify.

6. I have perused the grounds of the petition and the evidence of the Petitioner. From the foregoing I find that the Petitioner has proved the matrimonial offence of desertion as set out in **Section 66(2)(e)** which describes desertion as one of the matrimonial offences in the following terms:

“Desertion by the other spouse for at least three years.”

7. The parties have lived apart since 2010 to date on account of desertion by the Respondent according to the evidence of the Petitioner. The Petitioner also states that attempts at reconciliation by himself and their community have not been fruitful. It is evident therefore that the marriage celebrated between the parties herein on 25th January 1980 has irretrievably broken down with no hope of being salvaged.
8. In the premise I find that the petition has merit and allow it with orders as follows:
- a. That the marriage celebrated between the Petitioner and Respondent at Shri Swatamber Murti Puduk Kunvarbai Nathu Deva Jain Dharwashala, Jamnagar, Gujerat, India on 25th January 1980 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. This being a family matter, there shall be no orders as to costs.

SIGNED DATED and DELIVERED in open court this **30th day of March 2016.**

L. A. ACHODE

JUDGE

In the presence ofAdvocate for the Petitioner

In the presence ofAdvocate for the Respondent