



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 162 OF 2011

A S SPETITIONER

VERSUS

A N A.....RESPONDENT

JUDGMENT

1. **A S S** hereinafter referred to as the petitioner filed the petition dated the 30th of September 2011 seeking to dissolve their marriage with **A N A** hereinafter referred to as the respondent. The petitioner and the respondent got married at the Registrar's Office here in Nairobi on the 8th of February 2002. They have one child namely **A A** born on the 12th November 2007. After their marriage they have lived at various places in Nairobi as stated in the petition.

2. The petitioner's grounds for seeking dissolution of their marriage are cruelty, desertion and that the marriage has irretrievably broken down. The respondent filed an answer to the petition and a cross-petition dated the 24th of February 2012. He denies the allegations of cruelty and desertion as alleged by the petitioner. He has included **N T** as a co-respondent in his cross- petition and seeks that their marriage be dissolved on ground of cruelty, adultery and that the marriage has irretrievably broken down.

3. Parties recorded consents on various dates in court before the hearing. On the 7/5/2016 a consent was recorded to reduce the issues by amending the petition to include the ground that the marriage had irretrievably broken down as provided under section 65 (e) of the Marriage Act 2014 and that the issues to do with the child's custody, control and maintenance be addressed at the Children Court in the existing suit being Suit number 993 of 2012 and that each party to bear their own costs and that the respondent abandons the cross- petition. On the 7/3/2016 parties recorded a further consent as follows;

i. That the parties hereby agree to build a relationship based on trust and understanding for the upbringing and welfare of the child of the marriage namely **A A.**

ii. That the respondent , **A A shall continue to pay a monthly sum of Kshs. 45,000/- towards the monthly contribution of the child's maintenance and the same to be increased to Kshs. 75,000/- per month as and when the respondent' financial capacity allows him to do so.**

iii. That the petitioner shall withdraw her claim and prayer and any application thereto for alimony or maintained for herself with no order as to costs and shall undertake not or file any further claim for the same in future

iv. That current divorce proceedings to proceed and be concluded without any consideration to the evidence of the petitioner on alimony and be determined on the basis of her evidence on

the grounds for divorce.

4. On the 7/5/2016 the petitioner testified as follows that she seeks to abandon her grounds of cruelty and desertion and wishes to proceed with the ground that the marriage has irretrievably broken down. She testified that they have been living apart since 2009, they have one child and that they have had differences which are irretrievable. On being examined by the court she stated that she depends on her father together with the child who has medical issues as the minor suffer from a rear disease called APPBA. That they have attempted reconciliation but it did not go well and that they have not colluded to file the petition. The respondent did not testify. Counsels choose not to submit.

5. The Court of Appeal in **Civil Appeal No. 5 of 2015 J.S.M Vs. E.N.B**, whilst considering amounts to a marriage that has irretrievably broken down held as follows:

What factors may a court take into account in determining whether a marriage has irretrievably broken down under that provision? Without in any way limiting the considerations, we are of the view that they would include: the length of the period of physical separation; the levels of antagonism, resentment or mistrust between the parties; the concern of the parties for the emotional needs of each other; commitment of the parties to the marriage; chances of the parties resuming their spousal duties; chances of the marriage ever working again; among others. These considerations would be, in our view, a good indicator whether the marriage can be saved or whether the same has irredeemably broken down.” From the evidence adduced the marriage between the petitioner and the respondent has irretrievably broken down, they have been separated since 2009 about 7 years and there are no chances of reconciliation. Parties recorded a consent on maintenance which binds them. Under Marriage Act 2014 section 65 (e) a marriage can be dissolved on grounds that it has irretrievably broken down. This court there dissolves the marriage between the petitioner and the respondent celebrated on the 8th of February 2002 at the Registrar of marriage at Registrar’s office. Parties are bound by the consents recorded in court. A decree nisi to issue and to be made absolute within 30 days. Each party to bear their own costs. It is so ordered.

Dated signed and delivered this **22nd** day of **June 2016**

R.E.OUGO

JUDGE

In the presence of;

.....**For the Petitioner**

.....**For the Respondent**

Ms. Charity

Court Clerk