



REPUBLIC OF KENYA
HIGH COURT OF KENYA
AT NAIROBI
FAMILY DIVISION
DIVORCE CAUSE 40 OF 2015

G W WPETITIONER

VERSUS

H G N.....RESPONDENT

JUDGMENT

The Petitioner filed the Petition on 24th February 2015 and deposed that on 9th December 2006, she and the Respondent solemnized their marriage under the **African Christian Marriage and Divorce Act Cap 151** (repealed marriage now governed by the **Marriage Act 2014**) as confirmed by copy of marriage certificate attached to the petition.

They both resided in United Kingdom from 2006 – 2008. They have 2 issues of the marriage; A N G aged 6 years and A W G aged 5 years.

During the pendency of the marriage the Respondent was cruel to the Petitioner by directing all his attention to business and he had no time for the family. He was absent from home for long periods and he travelled back to Kenya on account of business transactions. When he was with the family he was constantly on phone on account of business communications.

Despite the Respondent's businesses, the petitioner was left to shoulder most of the family obligations and expenses that left her in debt of over 62,000 pounds.

From 2010 - 2013 the Respondent visited them for a month on each year. In 2014 the Respondent relocated to Tanzania and since then she lived with the 2 children alone upto date.

For these reasons the Petitioner is emotionally drained and traumatized from sole responsibility of the family due to the Respondent's neglect. The marriage between the Petitioner has irretrievably broken down and as a result the Petitioner seeks dissolution of the marriage.

The Respondent was served with the Petition and notice to appear as evidenced by the affidavit of service filed on 5th May 2015. Despite service, the Respondent did not enter appearance nor file any response to the petition. The Registrar's certificate was issued on 21st May 2015 that the matter is heard as an undefended Cause.

On 27th June 2016, the Petitioner G W W testified in Court and produced the original marriage certificate to confirm her marriage with the Respondent.

The Petitioner gave in great detail the particulars of cruelty as outlined in paragraph 8 of her petition and as described above. The Petitioner highlighted instances of the Respondent's neglect and constructive desertion to the family; herself and the minor children of their marriage.

The Petitioner stated that she obtained loans and gave the Respondent to invest in business to the tune of 42,000 pounds. He promised to refund the loans but did not do so. Together with these loans, the Petitioner had to sustain her family. The Respondent broke off all communication with the Petitioner, he stopped going to Church and the Petitioner discovered he was a Muslim. The Petitioner tried reconciliation through the Respondent's mother but the efforts were futile. The Petitioner remains solely responsible for the children of the marriage.

The Respondent did not appear or file and documents or tender any documents or produce evidence in Court. There are no reasons advanced for this Court to consider on non appearance and/or filing of documents or furnishing this Court with any evidence. In the absence of any evidence to challenge the Petitioner's allegations or controvert her testimony , this Court finds the pleadings filed and adduced evidence to disclose legal grounds of divorce as provided by **Section 66 of the Marriage Act 2014**.

Article 45 of the Constitution mandates the legal institutions to uphold and support the family unit. However, in the instant case, the Petitioner and Respondent have stayed apart more than they have been together during their marriage. This is coupled by neglect and cruelty by the Respondent; such that the marriage has irretrievably broken down. The Respondent deserted his family from 2014 to date. These circumstances do not facilitate any opportunity of reconciliation or salvaging the marriage as it can only be a joint effort of both parties. Therefore this Court finds that the marriage between the Petitioner and Respondent for all intents and purposes to have broken down.

COURT ORDERS

The Court grants the following orders;

- 1. The marriage between the Petitioner and Respondent solemnized on 9th December 2006 is hereby dissolved.**
- 2. Decree nisi to issue forthwith and decree absolute to issue in 30 days.**
- 3. The Petitioner shall have and retain legal custody of the children of the marriage.**
- 4. Each party to bear its own costs.**

DELIVERED SIGNED AND DATED IN OPEN COURT ON THIS 16TH DAY OF AUGUST, 2016

MARGARET. W. MUIGAI

JUDGE

In the Presence of:

N/A