



REPUBLIC OF KENYA
IN THE HGI COURT OF KENYA AT NAIROBI
DIVORCE CAUSE NO. 41 OF 2014

S. K. J.....PETITIONER

VERSUS.

K. K. V. J.....RESPONDENT

JUDGMENT

The Petitioner S. K. J. filed a petition on 21st February, 2014 for the marriage between her and the Respondent, her husband K. K. V. J be dissolved. The Respondent to pay reasonable maintenance and/ or secured provision to the Petitioner and any further orders or reliefs the Court may deem fit to grant.

The Petitioner and Respondent solemnised their marriage on 16th June, 2004 as evidenced by copy of the marriage certificate No. [*Particulars withheld*].

The Petitioner and Respondent cohabited in various locations within Nairobi during the marriage and there were no issues of the marriage.

The Petitioner and Respondent's marriage has irretrievably broken down as the last five (5) years they lived separately.

The Petitioner served the Respondent the petition and hearing notice. The Respondent did not enter appearance and/or file Answer to petition or Cross petition.

On application for the Registrar's Certificate, the Petitioner obtained the certificate on 26th June, 2014 to have the matter proceed as an undefended Cause.

On 20th November, 2014 the petitioner gave oral evidence as to the matters pleaded in the petition. She alluded to the fact that as married couple they grew distant and lived separately since the marriage and finally they separated in December 2013.

In the absence of any pleadings filed and /or evidence adduced by the Respondent to controvert the testimony of the Petitioner, the Court finds the basis of the marriage having irretrievably broken down confirmed.

Section 66(2) of Marriage Act 2014 lists grounds for dissolution of a Civil marriage. Among the grounds in **Section 66(2)(e) of the Marriage Act**, that stipulates; the irretrievable break down of the marriage.

Irretrievable break down of marriage is defined in **Section 66 (6) (d)** when, as in this case the spouses

have been separated for at least two (2) years, whether voluntarily or by decree of the Court. The Petitioner and Respondent separated in December, 2013 to date and therefore clearly the marriage has irretrievably broken down as the parties have each gone their separate ways.

The Petitioner sought reasonable maintenance and/or secured sum from the Respondent. The Petitioner deponed that she is a graphic designer and the Respondent a banker.

Article 45(3) Constitution stipulates that parties are entitled to equal rights at the time of marriage, during the marriage and at the dissolution of marriage.

Therefore the Petitioner is entitled to maintenance/secured sum from the Respondent. However, The Court has to take into account the financial capacity and support of each party. To do this, each party ought to file an affidavit of means to enable the Court make an informed decision. From the pleadings and evidence on record, it is not possible to award an appropriate sum in the circumstances.

The Court finds the marriage between the

1. Petitioner and Respondent solemnised on 21st February, 2014 has irretrievably broken down and it is hereby dissolved.
2. A decree nisi to issue forthwith and decree absolute to issue in 6 months.
3. The order to be awarded maintenance to be determined upon filing of affidavit of means by the parties.
4. Each party is at liberty to apply to the Court.
5. Each party to bear its own costs.

READ AND SIGNED IN OPEN COURT AT NAIROBI THIS 29th DAY OF JANUARY, 2015.

M. MUIGAI

JUDGE

In the presence of:

Counsel for the Petitioner absent

Counsel for the Respondent absent