

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 28 OF 2014

D D M.....PETITIONER

VERSUS

B D DRESPONDENT

JUDGMENT

1. The Petitioner has filed a petition dated 4th February 2014 seeking the dissolution of his marriage to the respondent. He got married to the respondent on 25th January 1987 in accordance with the marriage laws of India. After the said marriage the petitioner and the Respondent cohabited as man and wife in Nairobi. The parties have two issues of the marriage A D D and N D D. Both parties are Kenyan citizens domiciled in Kenya. The petitioner is a General Manager at *[particulars withheld]* Packaging Co. Ltd while the respondent is a housewife.

2. The petitioner claims that 2 years earlier the respondent who has irrational temper abandoned the matrimonial home to go and live alone. He testified that on various occasions during the subsistence of the marriage the respondent caused him grievous bodily harm, was cruel to him and has refused to return to her matrimonial home. These are acts that the petitioner claims not to have condoned adding that they caused him physical and psychological harm. He testified that when the respondent moved out of the matrimonial home she left with the children without any legal justification. That the respondent subjected him to mental anguish and beat him regularly acts which he claims he has not condoned and denies any collusion with the respondent to bring the said petition or seek dissolution of the marriage.

3. The respondent despite being served did not file an answer to the said petition. Subsequently the petitioner applied and was issued with a Certificate of Registrar to proceed with the hearing of the petition as undefended.

4. The petitioner testified that he got married to the respondent on 25th January 1987 in India and had been married to the respondent for 28 years. Their children are 25 and 23 years old. A D D the eldest is studying and working in Canada. He sought to divorce his wife whom he claimed was too dominating and physically abusive to him. He added that the respondent left a year earlier for Rwanda and despite his efforts and his family efforts they have not been able to change the respondent's behavior.

5. The petitioner's evidence was not challenged. It is evident that the marriage between the parties has irretrievably broken down and there is no possibility of reconciliation. From the petitioner's evidence the Respondent deserted their matrimonial home a year earlier and has not returned to the matrimonial home since then. Section 8 of the Matrimonial Causes Act Cap 152 (now repealed) outlines grounds of divorce. Some of the grounds are cruelty and desertion. Section 8 (b) provides that *a petition for divorce may be presented to the court by either party on grounds that the respondent has deserted the petitioner without cause for a period of least 3 years immediately preceding the presentation of the petition* while section 8(c) provides that *“(1) A petition for divorce may be presented to the court either by the husband or the wife on the ground that the respondent has since the celebration of the marriage treated the petitioner with cruelty”*. The Marriage Act 2014 at Section 66 outlines the grounds for dissolution of a marriage, amongst them being desertion by a spouse for at least three and cruelty.

6. The petitioner claims that the respondent left the matrimonial home an year earlier without any lawful cause or justification and has since then stayed away. The period between her departure and the filing of

this petition is not yet 3 years and as such the said petition could fail on that ground. However, the petitioner has also alleged cruelty which is also provided for as a ground for petitioning for a divorce plus the marriage has irretrievably broken down. The petitioner has in no way condoned the respondent's cruelty nor colluded with the respondent to bring this petition. This court therefore dissolves the marriage between the Petitioner and the Respondent celebrated on the 25th January 1987. A decree nisi to issue forthwith and to be made absolute within 30 days. No orders as to cost. It is so ordered.

Dated, signed and delivered this 26th day of *February* 2015.

R. E OUGO

JUDGE

In the presence of:

.....**Petitioner**

.....**Respondent**

Mr. Makori

Court Clerk