



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
DIVORCE CAUSE NO. 118 OF 2013

S H S R.....PETITIONER

VERSUS

T S.....RESPONDENT

JUDGMENT

1. The Petitioner has filed a petition dated 17th June 2013 seeking the dissolution of his marriage to the Respondent. He avers that on the 2nd May 1992, he got married to T S J, in Nairobi, Kenya according to the Ismailia customs and practices. After the marriage he lived and cohabited with the Respondent at Nairobi for the period between 1992 to 2012. The marriage was blessed with two children from the marriage Z S born on 26th July 1994 and S S born on 9th April, 2003. Both the petitioner and respondents are domiciled in Kenya. The petitioner claims that since the celebration of the said marriage the respondent has committed acts of disrespect to the petitioner in the presence of the children of the marriage and the house help. That she has treated the petitioner with cruelty which has affected him psychologically. He particularized the particulars of cruelty as follows;

Particulars of Cruelty

- a. That the Respondent has on various occasions during the subsistence of the marriage used very abusive language to the petitioner in front of the children of the marriage and the house help.
 - b. The respondent has on several occasions misused the family property to wit caring less on the good condition of the matrimonial home and damaging vehicles for instance in the year 2000 on 19th February, and on 19th February, 2012 and in both instances the vehicles were damaged to an extent that one was written off thus embarrassing the petitioner.
 - c. The respondent has on several occasions totally refused to provide for the children of the marriage notwithstanding that she is financially capable as is provided by article 53 of the Constitution.
2. Reconciliation between the petitioner and respondent has failed and that the marriage has irretrievably broken down. He denies conniving or condoning the said cruelty.
3. The Petitioner testified as follows; his ground for divorce is on cruelty; that he has been suffering for years and that he and the respondent have irreconcilable differences. That the respondent does not listen to him and they cannot agree on anything and only lived with her because of the children. That the respondent set him backwards on the vehicle incidents .He stated that they went to the arbitration community (Aga Khan Ismailia Community) and both parties agreed to dissolve

the marriage. He informed the Court that there was a custody case No. 74 of 2012 which is not yet determined and the respondent has interim custody while he has right of access and maintenance costs is shared by both parties. He had initially filed the divorce in Milimani Commercial Law Court Case No 430 of 2012 but the Court ruled it had no jurisdiction. He stated that he was unable to live with the respondent as she drives him backwards instead of forward.

4. The Respondent filed an answer to the petition and a cross- petitioner. She denied all the allegations in paragraph 6 and 7 adding that the petitioner never made any attempts to reconcile but used physical violence on her. She admits that the marriage between her and the petitioner had irretrievably broken down. Her grounds in the cross petition are cruelty which she particularized as follows;
 - (i) Kicking and beating the respondent
 - (ii) Asking the respondent to commit abortion
 - (iii) Poking the respondent with butter knife which she reported to the police
 - (iv) Abusing the respondent and children in public
 - (v) Intoxicating and becoming rowdy at all times when the respondent and her children are prepared to go to bed
 - (vi) Denying the petitioner her conjugal rights at whims
 - (vii) Coming home late in the night and interrupting the respondent's sleep
5. The Respondent further claims that the petitioner deserted her in 2012 and was currently cohabiting with another woman elsewhere and has failed to maintain the respondent together with her children.
6. In his reply to the petitioner denied the allegations of cruelty leveled against him and put the respondent to strict proof thereof. He stated that he was forced to move out of the matrimonial home due to the provocation and malice of the respondent as she would pick quarrels with the petitioner and use it against him, inciting the children against him, being negligent with family assets and being a liability to the family.
7. I have read the submissions filed by the petitioner. The petitioner's evidence was not challenged. It is evident that the marriage of the parties had irretrievably broken down and there is no possibility of reconciliation Section 8 of the Matrimonial Causes Act Cap. 152 (now repealed) outline grounds of divorce. One of the grounds is cruelty. The Marriage Act 2014 at Section 66 outlines the grounds for dissolution of a marriage, amongst them being cruelty. The respondent denies the alleged cruelty but claims that it is the defendant who has been cruel to her adding that he beats and abuses her and the children. However, the respondent has not adduced any evidence to support her claims and I therefore dismiss her cross petition. The respondent also stated that the petitioner had deserted the matrimonial home in 2012. The petitioner admits to having left the matrimonial home in 2012 and has since then stayed away. It is evident that the marriage between the petitioner and the respondent had broken down irretrievably. The petitioner mentioned incidents of cruelty that caused him to leave the matrimonial home and stated that they have irreconcilable differences.
8. This court therefore dissolves the marriage between the Petitioner and the Respondent celebrated on 2nd May 1992. Am informed that there is a pending custody case No. 74 of 2012 which is not yet determined. The interim orders therein to hold pending the outcome of the said custody proceedings. The respondent shall retain interim custody of the children and the respondent shall have right of access. A decree nisi to issue forthwith and to made absolute within 30 days. The

cross-petition is dismissed. Each party to bear its own costs. It is so ordered.

Dated, signed and delivered this 25th day of February 2015.

R. E OUGO

JUDGE

In the presence of:

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

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

.....**Court Clerk**