



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
DIVORCE CAUSE NO. 111 OF 2013

BETWEEN

A P M.....PETITIONER

AND

P M.....RESPONDENT

JUDGEMENT

1. On 5th March 1996 the Petitioner, then a spinster known as A H V S was lawfully married to the Respondent P M then a bachelor and a certificate Serial No. ***[particulars withheld]*** issued to them in accordance with the **Marriage Act Cap 152 Laws of Kenya**. The marriage was celebrated at Shree Visa Oshwal Vanik Community in Mombasa and thereafter they cohabited as husband and wife in Mwembe Tayari in Mombasa up to 1998 and later at Mukinduri in Westlands, Nairobi.
2. They were blessed with one issue of the marriage, namely R, a son aged 13 years and 6 months at the time of filing this cause.
3. Both the Petitioner and Respondent are domiciled in Kenya where the Petitioner is a Branch Manager with ***[particulars withheld]*** Limited and the Respondent is the General Manager of ***[particulars withheld]*** Limited.
4. On 10th June 2013 the Petitioner filed a petition seeking the dissolution of their marriage on grounds that since the celebration of their marriage the Respondent has been abusive, and has threatened, criticised and insulted the Petitioner. The Petitioner asserts that during the pendency of the marriage there were some instances when the Respondent would shout at her, bang doors and throw things around without any justifiable cause or reason. In the particulars of cruelty set out in the Petition the Petitioner avers that the Respondent has become a habitual drunkard who exhibits a horrible violent temper as a result.
5. The Petitioner states that the Respondent would at times abuse her in the presence of their child thereby subjecting him to traumatic experiences which affected his performance in school. Further that the Respondent showed no interest in the Petitioner or the child of the marriage and insisted upon he and the Petitioner sleeping in separate rooms, thereby causing her distress.
6. The Petitioner states that in the month of February 2012 she discovered through the Respondent's cell phone, that he was associating improperly with one B a wife to the Petitioner's cousin. That since

then the communication between them broke down, so much so that they communicated through emails and text messages only. That the Respondent's behaviour has resulted in the Petitioner suffering from severe mental stress, which has in turn manifested into physical illness, namely diabetes.

7. The Petition is supported by the Petitioner's affidavit sworn on 27th May 2013 in which she reiterated the contents of her Petition.

8. The Respondent was served with the Petition through a notice dated 12th June 2013. The Respondent filed an answer to the petition in which he has denied the allegations made in the petition, and averred that he did not neglect his family duties and that all along he has treated the Petitioner with utmost respect as his living wife. That the Respondent has during the pendency of the marriage entrusted the Petitioner with the finances, taken her and the child for holidays locally and internationally and given her free access to his bank account. He stated that it was the Petitioner who had treated him with cruelty. He also denied having ever associated himself improperly with one B, whom he states that he has only interacted with in the normal cause of family matters.

9. He further avers that it was the Petitioner's family who created a rift between them after the Respondent discovered that the Petitioner had sold all the gold he had given her and invested the money in their family business, thereby breaching the trust put in her by the Respondent.

10. On 31st October 2013 the Deputy Registrar duly certified that the pleadings were in order and that the cause was suitable to proceed for hearing as a defended cause for one day in Nairobi. The Petitioner testified on 6th November 2014 while the Respondent testified on 29th January 2015. Each reiterated what they had set out in the Petition and answer to petition respectively. The Petitioner also relied on her supporting affidavit sworn on 27th May 2013.

11. The Petitioner therefore prays that the marriage celebrated between him and the Respondent be dissolved. She confirms that this Petition has not been presented or prosecuted in collusion with the Respondent, neither has she connived in, or condoned the acts of cruelty complained of in the petition. She also certifies that there have been no previous proceedings filed regarding the marriage. I note that prayer b and c in the petition as to the custody and maintenance of the child of the marriage was abandoned and rightly so. These may be ventilated in the right forum.

12. The Respondent is also of the view that the marriage has irretrievably broken down and is beyond salvage. He too has asked the court to dissolve the said marriage.

13. From the foregoing matrimonial offences cited by each party, it is my considered view that the marriage between the Petitioner and the Respondent has irretrievably broken down and has no hope of being salvaged. In the premise the orders which do commend themselves to the circumstances of this case are as follows:

- a) That the marriage celebrated between the Petitioner and the Respondent at Shree Visa Oshwal Vanik Community in Mombasa on 5th March 1996, is hereby dissolved.
- b) That Decree Nisi dissolving the said marriage is hereby issued, to be made absolute thirty (30) days from the date of this judgment.
- c) Each party shall bear their own costs.

SIGNED DATED and **DELIVERED** in open court this **12th** day of **February 2015**.

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L. A. ACHODE

JUDGE