

REPUBLIC OF KENYA

IN THE HIGH COURT AT MALINDI

DIVORCE CAUSE NO. 7 OF 2012

J B KPETITIONER

VERSUS

L H KRESPONDENT

JUDGEMENT

The Petitioner is seeking to have the marriage between himself and the Respondent dissolved. He testified that they got married on the 31st December, 2005 at the District Commissioner's Office – Malindi. The marriage was not blessed with any child. His main reason for seeking the divorce is that the Respondent has been unfaithful and he found her in another man's house. At one time the Respondent left the matrimonial home for seven months. Whenever the Respondent is called over the phone she would normally go out to pick the calls. The Respondent is quarrelsome but at times ignores the Petitioner. Since February, 2011 the Respondent deserted the matrimonial home and has not gone back. He conceded that he had proposed to marry another woman.

On her part, the Respondent is also seeking to have the marriage dissolved. She testified that there is no love between the two of them. She used to love her husband but he has been harassing her. At one time she had to stop her husband's second wedding with a lady called J who is their neighbor. The Petitioner denied her conjugal rights. She is also seeking half a portion of a plot they bought together. She denied that she was involved with another man. The man being referred to by the Petitioner is called C O who lives along the way to their home. At one time the Petitioner saw her entering Charles' home and they entered into the house together.

It is evident from the pleadings and evidence of both parties that the marriage has irretrievably broken down. It is clear that the two parties are not living together. The Respondent did not deny that she left the matrimonial home since February, 2011. She informed the court that she decided to go back to her parents. The Petitioner himself confirmed that at one time he wanted to marry J but he was stopped. This was after he discovered that his wife was unfaithful.

Given the circumstances of this case, I do find that it would be fruitless to order the two parties to continue with the marriage. The act of leaving the matrimonial home for all that time is tantamount to desertion. It is also evident that each party is not faithful to the other. The marriage has broken down and there is no hope of reconciliation. Each party has gone his/her separate way and continues with his/her life. I do find that the Petitioner has proved his case and the marriage is hereby dissolved. With regard to the alleged plot, there is no evidence as to when the plot was bought and what was built thereon. According to the Respondent they bought the plot for Kshs. 30,000/- in 2006. No sale agreement was produced. No photographs to show the structure standing on the plot were produced. The court cannot conclude that indeed there is such a property.

In the end, I do hereby declare the marriage between the two parties dissolved. A Decree Nisi to be issued.

Delivered and dated at Malindi this **17th** day of **March, 2015**.

Said J. Chitembwe

JUDGE