



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 26 OF 2014

BETWEEN

J CPETITIONER

AND

W ORESPONDENT

JUDGEMENT

1. On 12th May 2012, the Petitioner, then a spinster known as J C was lawfully married to the Respondent W O, then a bachelor and a certificate Serial No. **[particulars withheld]** issued to them in accordance with the **Marriage Act Cap 150 Laws of Kenya**. The marriage was celebrated at the Registrar's office, Nairobi and thereafter they cohabited as husband and wife in Umoja and Tena Estate respectively in Nairobi. They were blessed with one issue of the marriage, who unfortunately passed on. Both the Petitioner and Respondent are domiciled in Kenya and work in Nairobi.
2. The Petitioner applied and was granted leave to petition the court for divorce before the expiry of the statutory (3) three year period on 29th January 2014 in Misc. App 99 of 2013. On 4th February 2014 she filed a petition premised on grounds of cruelty she alleged were visited upon her by the Respondent. The Petitioner set out the particulars of cruelty and averred that upon marriage, they lived happily for a few months until on or about the months of August, September and October 2012 when the Respondent assaulted her on several occasions to the point of threatening her with death. The Petitioner states that the Respondent would pick quarrels with her and come home late. That he would give her Kshs.1000/= for family upkeep and expect her to account for every cent with a receipt which she was unable to do.
3. The Petitioner further averred that she delivered a still-born baby and the Respondent accused her of colluding with the maid to kill his baby. That when her relatives visited to comfort her, for the loss of the baby, the Respondent complained that they had just come to eat his food. That he was infuriated when the Petitioner's relatives conversed in their mother tongue (Kipsigis) and on one occasion he told her that he had felt like beating all of them and chasing them out of his house. The Petitioner stated that if perchance she broke any of their utensils, he would call her names and say that she was wasteful. This made matters worse because she became more nervous and fearful of him.
4. The Petition is supported by her affidavit sworn on 4th February 2014, in which she reiterated the

contents of her Petition.

5. Upon service the Respondent filed an answer to the petition, in which he denied all the allegations of cruelty stated in the Petition. In his view all the issues raised are a creation of the Petitioner's family and especially her father who had never approved of their relationship, as they come from different tribes. He stated that no attempt at reconciliation had been made because when they asked to visit the Petitioner's home, they were told to go and take their dowry back. It is his contention that if at all the marriage has broken down, it is due to the behaviour of the Petitioner and her family. On his part he denies that the marriage between them has irretrievably broken down, and asserts that the Petition is premature and should be dismissed.
6. On 13th November 2014 the Deputy Registrar certified that the matter was suitable to proceed for hearing as a defended cause for one day in Nairobi. At the hearing on 5th February 2015 the parties agreed to take only the viva voce evidence of the Petitioner and adopt both the grounds of the petition and what the Respondent had stated in the Answer to the Petition. In her evidence the Petitioner reiterated the grounds set out in her petition and stated in her affidavit sworn on 4th February 2014.
7. Both the Petitioner and the Respondent confirm that this Petition and answer to petition have not been presented or prosecuted in collusion with one another, neither have they connived or condoned the acts of cruelty which they have complained of. They also certify that there have been no previous proceedings filed regarding the marriage.
8. From the foregoing 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. It is not contested that parents from both sides have had discussions and that in fact, the Respondent has already taken his dowry back. 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 the Registrar's office in Nairobi on 12th May 2012, 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. There shall be no orders as to costs.

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

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L. A. ACHODE

JUDGE