



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 269 of 2013

A K SPETITIONER

VERSUS

K D S.....RESPONDENT

JUDGMENT

1. The petitioner filed a petition dated the 9th December 2013 seeking to have the marriage between herself and the respondent to be dissolved. The petitioner and the respondent got married on 8th December 2001 at the Hindu Council; Cutchi Gujarati, Hindu Temple, Nakuru under the Hindu Marriage & Divorce Act (Cap 157) of the Laws of Kenya and cohabited at 6th Parklands 2001-2003 and Royal Promenade, Raphta Road, Flat *[particulars withheld]*-2004-2013. There is one adopted child of the marriage namely; D K S born on 1st June 2012. Both Petitioner and the Respondent are resident and domiciled in Kenya. The petitioner argues that during the subsistence of the marriage, the Respondent has been guilty of cruelty and as a consequence of the same the marriage has irretrievably broken down. That the petitioner denies being an accessory to, condoning or conniving or concurring to the respondent's cruelty.
2. She particularized cruelty as follows; that the respondent has failed to display any love towards the petitioner and has been physically and emotionally unavailable to the petitioner making the petitioner feel alienated and unwanted; the respondent has refused to discuss issues affecting the marriage with the petitioner, making the petitioner feel like she was a burden on the respondent and further making her feel neglected and unwanted; the respondent has denied the petitioner her conjugal rights; despite all the efforts put by the petitioner to save the marriage, the respondent has failed and/or refused to cooperate and consequently the marriage between the petitioner and the respondent is at an end.
3. The petitioner therefore prays for the following orders;
 - a. That the marriage between the petitioner and the respondent be dissolved.
 - b. That the petitioner be granted sole custody care and control of the child namely, D K S with reasonable access to the respondent
 - c. The respondent be ordered to provide consistent and adequate maintenance for the child.
 - d. That the respondent be condemned to bear the cost of this cause.
 - e. Any further or other relief that this honorable court may deem just and fit to grant to the petitioner in the circumstances.
4. The petitioner in his Answer to the petition and cross petition denied being cruel to the respondent or failing to be physically and emotionally unavailable to the petitioner as alleged but argues that

it is the petitioner who became unjustifiably cruel to him during the subsistence of the marriage which acts he avers have led their marriage to irretrievably breakdown and caused the erosion of the substratum of their relationship. That the differences between the petitioner and the respondent are irreconcilable. The respondent denies condoning the cruelty of the petitioner.

5. The respondent prays for the following orders
 - a. That the petitioner's petition be dismissed and the respondent's Cross Petition be allowed.
 - b. That the marriage between the respondent and the petitioner herein be dissolved.
 - c. That the Respondent be granted joint custody of the child D K S with the petitioner.
 - d. That both the petitioner and the respondent be ordered to provide consistent and adequate maintenance for the child in accordance with their means and as may be determined by the honorable court herein.
 - e. That the petitioner herein should not remove the child from the jurisdiction of this honorable court or from the republic of Kenya without leave of the court.
 - f. That each party bears its own costs.
6. The respondent particularized the petitioner's cruelty as being unreasonable, antagonistic and uses verbal profanity making it difficult to have a meaningful conversation with the respondent; that the Petitioner does not play her role as a wife in the relationship and does not show care and interest towards the respondent and has constantly been neglecting the respondent choosing instead to attend to the needs of others at the expense of abandoning the marriage; the respondent is a domineering person that is unwilling to play her role in the marriage relationship and this has led to bad blood in the marriage.
7. The cause came up for hearing on 23/4/2015 and the petitioner reiterated the averments of her petition adding that the marriage has irretrievably broken down and there are not able to communicate and there is no love and they no longer have any conjugal rights adding that she no longer claimed custody of the child of the marriage as they had already filed a legal custody consent dated 21st April 2014.
8. The petitioner further testified that the marriage has irretrievably broken down and the parties separated in October 2013 adding that she had dual citizenship of Kenya and the United Kingdom and was intending to relocate to the United Kingdom with the child and that she has already signed a statutory declaration on the same.
9. The respondent did not attend court and in his absence his counsel Mr. Nyaga abandoned the cross petition.
10. The petitioner alleges cruelty as her ground for seeking divorce. Cruelty is one of the grounds for divorce provided for under the Matrimonial Causes Act Cap 152 (now repealed) and also the Marriage Act 2014. The petitioner in her evidence narrated that there was communication breakdown between them and that they have not had conjugal rights which has resulted to the irretrievable breakdown of their marriage and as such there is no possibility of reconciliation. Denial of conjugal rights in my view amounts to cruelty in the ordinary sense of the word. Communication is vital and key to the nurturing and sustenance of any marriage apart from love and companionship. This court finds that the marriage between the petitioner and respondent has irretrievably broken down. This court therefore dissolves the marriage between the Petitioner and the Respondent celebrated on 8th December 2001. A *decree nisi* to issue forthwith and to be made absolute within 30 days. Each party to bear its own costs. No orders as to costs. It is so ordered.

Dated, signed and delivered this **29th** day of **May** 2015.

R. E. OUGO

JUDGE

In the presence of:-

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

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

.....**Court Clerk**