



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**(FAMILY DIVISION)**  
**DIVORCE CAUSE NO. 161 OF 2013**

**S S R.....PETITIONER**

***VERSUS***

**P K S.....RESPONDENT**

**JUDGMENT**

By a petition filed by the Petitioner on 6<sup>th</sup> August, 2013;

1. The Petitioner S S R and Respondent P K S solemnized their marriage on 17<sup>th</sup> December, 2000 under E. A. Ramgarhia Board under Hindu Customs as provided under the **Hindu Marriage and Divorce Act (Cap 157 of Laws of Kenya) (repealed)**.
2. They resided and cohabited in Nairobi Kenya. They have one issue of the marriage S S R aged 10 years old.
3. The Petitioner sought dissolution of the marriage and alleged that the Respondent had uncontrollable anger rage and hysteria during their marriage that he feared for his life the child's the Respondent's lives. Their marriage irretrievably broke down and they separated.
4. In January, 2009 after the Respondent obtained medical attention she collected all her belongings and left the matrimonial home.
5. The Petitioner pleaded that their marriage had irretrievably broken down and therefore he sought dissolution of the marriage and shared legal custody of the child of the marriage.
6. On 18<sup>th</sup> October, 2013 the Respondent filed Answer to petition and Cross Petition and alluded to the following allegations;
  - i. The Petitioner was extremely violent and engaged in extra marital affairs and denied her conjugal rights.
  - ii. The Respondent particularized the grounds on adultery and cruelty in paragraph 6 of the Cross Petition.
  - iii. The Respondent sought dissolution of marriage, joint legal custody and physical custody of the child of the marriage.
  - iv. The Petitioner to pay maintenance of the child and alimony to the Respondent and pay costs of the suit.

7. The hearing commenced on 13<sup>th</sup> November, 2014 with the Petitioner's testimony detailing the facts as pleaded in the Petition. The Respondent also testified on the particulars pleaded in the cross petition. The hearing was adjourned as the Respondent was not able to continue with her testimony in light of the prevailing circumstances which Counsel alluded to as the presence of family members in the proceedings.
8. On 23<sup>rd</sup> July, 2015 the parties through Counsel filed consent on the custody of the issue of the marriage, visitation program, maintenance of the child and alimony to the Respondent by the Petitioner.
9. The Petitioner and Respondent sought dissolution of marriage on the grounds that the marriage had irretrievably broken down. They made accusations against each other on the grounds of cruelty, desertion and cruelty.

#### 10. LAW

The grounds for Dissolution of a Hindu marriage are provided for in **Section 70 of the Marriage Act, 2014**. The grounds are;

- a. *The marriage has irretrievably broken down;*
- b. *The other party has deserted the Petitioner for at least three years before the making of the petition;*
- c. *The other party has converted to another religion;*
- d. *Since the celebration of the marriage, the other party has committed rape, sodomy, bestiality or adultery;*
- e. *The other party has committed cruelty on the other; and*
- f. *The other party has committed exceptional depravity on the other.*

#### 11. ANALYSIS

The Court has considered the particular of cruelty, desertion and adultery and testimony by both the parties in Court. The Court is of the view that the allegations are proved on a balance of probability. The parties reached a stage that they could not live together and have lived separately since 2009 almost 6 years.

12. Whereas the Court is supposed to preserve the sanctity of marriage under **Article 45 of the Constitution of Kenya, 2010** in the instant case, the parties have no intention of reconciliation as borne out by the evidence on record.

13. From the evidence this Court is satisfied that the marriage has irretrievably broken down.

In **N V N (2008) KLR 16** through Justice Madan (as he then was) stated;

*“If two spouses have reached the point of not being able to live together reasonably happily for causes some of which may appear trifling to an outsider but are of vital effect upon their lives and which are felt by them to be intolerable, or unreasonable to continue to bear then, they are entitled to be released from their matrimonial union.....”*

#### FINAL ORDERS

The Court hereby grants the following orders;

- i. **The marriage between the Petitioner and the Respondent solemnized on 6<sup>th</sup> August, 2003 is hereby dissolved;**
- ii. **The decree nisi to issue forthwith and decree absolute in 6 months;**
- iii. **The Petitioner and Respondent are granted legal and joint custody of the child S S R;**

- iv. Visitation program and physical custody shall be as per the consent signed on 23<sup>rd</sup> July, 2015;
- v. The Petitioner shall pay the school fees and school expenses of the child as per Court of 23<sup>rd</sup> July, 2015;
- vi. The Respondent shall provide food clothing shelter and medical cover for the child as per Court of 23<sup>rd</sup> July, 2015;
- vii. The Petitioner shall transfer Apartment [particulars withheld] to the Respondent in trust for the child of the marriage S S R as per Court of 23<sup>rd</sup> July, 2015;
- viii. There shall be no orders as to costs.

**READ AND SIGNED IN OPEN COURT AT NAIROBI THIS 25<sup>TH</sup> DAY OF SEPTEMBER, 2015**

**M. W. MUIGAI**

**JUDGE**

*In the presence of:*

*Mr. Njoroge for the Petitioner*

*Ms. Agaba holding brief Ms. Nganga for the Respondent*