



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
FAMILY DIVISION
DIVORCE CAUSE NO. 22 OF 2014

R.P.....1ST PETITIONER

E.N.G.....2ND RESPONDENT

JUDGMENT

1. R.P, the Petitioner herein filed a petition on 3rd February 2014 seeking that the marriage between him and the Respondent E.N.G be nullified on the ground of non -consummation of the marriage.
2. The Petitioner and the Respondent were lawfully married on 16th June 2012, and their marriage was solemnized at the Gazebo Restaurant under the **Marriage Act (now repealed)**. This is not disputed by the Respondent who admitted the same in her petition and cross petition that was filed on 1st December 2014. A copy of the Certificate of Marriage is annexed to the petition as proof of his marriage to the Respondent. It is on this basis that this court can make a finding that there is a valid marriage between the Petitioner and the Respondent.
3. After the celebration of the marriage, the Petitioner and the Respondent cohabited briefly in [particulars withheld] estate within Nairobi.
4. In his petition, the Petitioner alleged that since the celebration of the marriage, the Respondent has refused to consummate the marriage. It is for this reason that the Petitioner has petitioned this court to have his marriage to the Respondent nullified.
5. In her answer to the Petitioner's Petition, the Respondent denied the allegation made by the Petitioner in his petition for divorce and put the Petitioner to strict proof thereof.
6. In her cross petition, the Respondent stated that the Petitioner was guilty of material non -disclosure prior to the celebration of the marriage. According to the Respondent, the Petitioner failed to disclose that he had a communicable disease which he passed on to the Respondent during the consummation of the marriage. The Respondent stated that because of the Petitioner's conduct, the marriage has since irretrievably broken down with no chance of reconciliation. She therefore urged the court to dissolve the marriage.
7. The matter was heard on 23rd July 2015. During the hearing, the Respondent gave oral evidence reiterating the averments in her petition for divorce. She testified that she only lived with the Petitioner for three (3) weeks. She told the court that she parted ways with the Petitioner after the Petitioner infected

her with a sexually transmitted disease. On his part, the Petitioner chose not to adduce any evidence in support of his petition for divorce.

8. From the pleadings and oral evidence of the parties in this case, this court finds that the following are the issues for determination to which the court will focus its legal analysis.

a. Whether the Parties herein have adduced sufficient evidence in their respective presentations to warrant the grant by this court of a divorce;

b. Who should bear the costs of this suit as prayed by the parties.

9.. By his application of 3rd February 2014, the Applicant seeks to have the marriage between him and the Petitioner nullified on the ground of non-consummation of the marriage. However, the Petitioner failed to adduce any evidence in support of his petition for divorce. This court therefore finds that the Petitioner did not prove his case against the Respondent. The Petitioner's petition for nullification of the marriage is therefore dismissed.

10. The evidence on record shows that the Petitioner and the Respondent contracted a civil marriage, and thus, the applicable law concerning the dissolution of their marriage is to be found in **Section 66** of the **Marriage Act 2014** which provides:

“(1)A party to a marriage celebrated under Part IV may petition the court for the separation of the parties or the dissolution of the marriage unless three years have elapsed since the celebration of the marriage.

(2) A party to a marriage celebrated under Part IV may only petition to court for the separation of the parties or the dissolution of the marriage on the following grounds-

a. adultery by the other spouse;

b. cruelty by the other spouse;

c. Exceptional depravity by the other spouse

d. Desertion by the other spouse for at least three years; or

e. The irretrievable breakdown of the marriage.”

11. This court shall now examine the Respondent's cross petition for divorce of 1st December 2014. The Respondent and the Petitioner contracted a civil marriage on 16th June 2012. Three years had not passed since the celebration of the marriage when the Respondent cross petitioned to be divorced from the Petitioner. The Respondent's cross petition for divorce is therefore premature.

12. In the final analysis, this court orders that the Petitioner's petition of 3rd February 2014 and the Respondent's cross petition of 1st December 2014 are hereby dismissed. Any aggrieved party is at liberty to apply. Each party shall bear his own costs of the suit. It is so ordered.

READ AND SIGNED IN OPEN COURT AT NAIROBI ON THIS 27TH DAY OF OCTOBER, 2015

M.W. MUIGAI

JUDGE