



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA

FAMILY DIVISION

DIVORCE CAUSE NO. 14 OF 2015

J A MPETITIONER

VERSUS

M ERESPONDENT

JUDGMENT

1. The petitioner **J A M** has filed this petition dated 11th March 2015 seeking the dissolution of her marriage to the Respondent **M E**. The Respondent despite having been served with summons to enter appearance as well as the petition failed to put in any appearance. The matter proceeded as an undefended cause.

2. The grounds for divorce as stated in the Petition are cruelty, adultery and desertion, the particulars of which are set out in paragraphs 8, 9 and 10 respectively of the Petition. The petitioner testified in court on 10.9.15. She told the court that she and the Respondent got married on 29.11.11 at the Registrar's Office in Kisumu. Following their marriage, the couple cohabited in Kisumu for 2 years. The Petitioner testified that due to irreconcilable differences, she moved to Mombasa in April 2013 and lived alone. Thereafter the parties reconciled and the Respondent promised to change. He joined the Petitioner in Mombasa and they lived in Shanzu, Cowrie Shell and finally in Diani. For a time the Respondent was good to the Petitioner but he later changed. The Petitioner therefore prays for the dissolution of the marriage as all efforts at reconciliation have been fruitless.

3. I have considered the Petition and the uncontroverted testimony of the Petitioner. The facts herein are as follows. The petitioner a Kenyan national met and married the Respondent, a Canadian national on 29.11.11 at the Registrar's office in Kisumu. The marriage certificate serial number [particulars withheld] is sufficient proof of the fact of the marriage. After the marriage the two cohabited as man and wife in Kisumu, Mombasa and Diani. However the couple separated in January 2013. The Petitioner moved to Mombasa and stayed there alone until December 2013 when they reconciled and the Respondent joined her. In January 2015 however, the Respondent left the matrimonial home and has not returned since. The Petitioner lives in Diani while the Respondent lives in Nyali. The petitioner then filed this petition seeking a divorce.

4. The Marriage Act, 2014 at Section 66(2) provides for the grounds upon which a civil marriage may be dissolved. These include:

(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”**

5. In her Petition and in her evidence the petitioner cites the grounds of cruelty, adultery and desertion.

6. On the ground of cruelty, the Petitioner testified that the Respondent would ask her to bring other women home so that they could have threesome sex between the Respondent, the Petitioner and another woman which was against her religion and culture and this caused her distress. This aspect of cruelty is proved by the skype and text message printouts **Pexb3**. She further stated that the Respondent told her that he did not want children a fact that he never mentioned to the Petitioner prior to the marriage, leaving her feeling betrayed. The fact that there are no issues in the marriage attests to this. The Petitioner also stated that sometime towards the end of 2014, he made her sign a document stating that all the property they had was his and that he also made her sign a will dated 26.11.14 giving him all the property **Pexb2**. The said documents contain her signature but no evidence was tendered to show that the Petitioner signed the same under duress.

7. On the ground of adultery, the Petitioner testified that she saw medical results of and payment receipts in the names of various women who had been tested for sexually transmitted diseases **Pex4**. When she confronted him, he admitted that he had had sexual relations with the women and had sent them for the tests. This was done through skype and text messages. Printouts of skype and text messages were produced as **Pexb3**. The medical reports and the skype and text message printouts confirm the allegations of adultery. I therefore find that the ground of adultery was proved.

8. On the ground of desertion, the Petitioner told the Court that in January 2015, she picked him up from the airport and when they got home, he put his belongings in his car and left the matrimonial home never to return. For desertion to constitute a ground for divorce, it must run for a period of at least 3 years. It is the Petitioner’s testimony that the Respondent left the matrimonial home in January 2015. Not even one year has ended since he left. This ground must therefore fail.

9. It is clear from the foregoing that the marriage herein has irretrievably broken down. Accordingly, I pronounce a decree of divorce and order that the marriage solemnised at the Registrar of Marriages Office in Kisumu on 29.11.11 be and is hereby dissolved. Decree *nisi* to issue and the same to be made absolute within 3 months. Costs to be borne by the Respondent.

DATED, SIGNED and DELIVERED in MOMBASA this 11th day of November, 2015.

M. Thande

Judge

In the presence of: -

..... **for the Applicant**

..... **Court Assistant**