

REPUBLIC OF KENYA

IN THE HIGH COURT

AT MALINDI

DIVORCE CAUSE NO. 5 OF 2015

L.P.....PETITIONER

=VRS=

E.M. K.....RESPONDENT

J U D G M E N T

The two parties got married on 11th March 2011 at Watamu under the Kenyan Marriage Act, Chapter 150 Laws of Kenya. The Petitioner filed this Petition seeking to have the marriage dissolved. The Petition dated 25th March 2015 indicate that the reason for seeking the dissolution of the marriage is adultery. The Respondent filed his answer to the Petition dated 30th July 2015 and seeks to have the marriage dissolved.

The Petitioner's evidence is that she is a medical doctor working at a hospital in Rome. She testified that the marriage between the two is not working. She saw the respondent on face book having taken photographs with several other women. One of the ladies called her to inquire whether she is married to the respondent. The respondent had told the lady that he is not married and has no family. The respondent has been telling all the ladies he meets that he is not married. Some of the ladies are from Italy and know the Petitioner.

It is the Petitioner's evidence that the respondent only wanted economic gain from her but he is not interested in her. She suspects he has another family. On the same day they got married, the respondent disappeared in the evening.

On his part, the respondent testified that the petitioner hurriedly organised the wedding as she was about to go back to Italy. He later travelled to Italy. One day they went to visit the petitioner's mother and the petitioner asked him to remove the wedding ring so that her mother could not know that they were married. He denied that he disappeared immediately after the wedding. He works as a beach operator and normally takes photographs with several women. One of the women on the photo produced by the petitioner was known to him even before they got married. He had no intention of financial gain from the petitioner. The petitioner only promised to give him Kshs.1,000 per day. She has been doing so and this was meant to make the respondent leave his work as a beach operator.

He acknowledges that the petitioner has assisted him financially and he loved her. He complained that his conjugal right was limited. He is also seeking to have the marriage dissolved.

From the evidence on record, it is clear that the marriage between the parties is no longer working. I have seen the photographs provided by the petitioner and to find that she has every right to complain. Those are not ordinary photographs taken by beach operators and tourists. One can conclude that there is intimacy between the respondent and the lady on the photos. The respondent's explanation that he was advised by his friends to post the photos on face book so that the petitioner could see them is not convincing. Coupled with that, the lady called the petitioner to inquire whether she was married to the respondent. The only logical conclusion is that the lady and the respondent wanted to get married.

It is clear to me that the marriage between the two has worn out. There are no feelings between the

two. I do find that the petitioner has proved her case. The respondent is equally seeking a divorce. The court cannot compel the two to live together against their will. The marriage between the petitioner and the respondent is hereby dissolved. A decree nisi to issue Each party to meet their own costs.

Dated, signed and delivered at Malindi this **9th** day of **December** 2015.

SAID J. CHITEMBWE

JUDGE