



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
DIVORCE CAUSE NO. 14 OF 2012

R K B.....PETITIONER

VERSUS

C M A.....RESPONDENT

JUDGMENT

The petitioner herein **R K B** has filed in court this petition dated 20th February, 2012 seeking the following orders.

- “(1) That his said marriage between the petitioner and the respondent be dissolved.**
- (2) That the respondent maybe condemned to pay the costs of this suit.**
- (3) Any other and/or further order this Honourable Court deems fit and just to grant in the circumstances.”**

The respondent **C M A** was duly served with both the petition as well as a summons to enter appearance. She did not file any response to the petition. The matter therefore proceeded as an undefended cause.

The petitioner testified before this court on 9th December, 2013. He told the court that he and the respondent met and married on 23rd April, 2010. He has produced in court a copy of their marriage certificate serial number [Particulars withheld] **Pexb1**. After the marriage the couple set up home at [Particulars withheld] Flats in the Bamburi area of Mombasa. In July, 2011 they moved to a new home in Nyali. The couple had no child together but the respondent had a son from an earlier relationship who the petitioner took in and provided for.

According to the petitioner their marriage was problematic. He concedes that he did not know the respondent well enough before he married her. She turned out to be an adulterous woman who was also an alcoholic. The petitioner avers that the respondent was abusive to him both verbally and physically. He claims that she engaged in adultery with a 19 year old neighbour causing the mother of the boy to complain. The last straw was when the petitioner discovered that the respondent was engaging in sexual relations with a counselor named **A O** whom he had engaged to help the couple sort out their marital woes. The petitioner stated that he arrived home one day to find the two in a compromising position. This caused him to walk out of the home on 31st January, 2012 barely two years after their wedding. The petitioner claims that efforts to seek reconciliation through the family has failed. He now seeks a divorce.

As stated earlier the respondent though properly served did not enter appearance neither did she file a response to the petition. As such the testimony of the petitioner remains unchallenged. Though this petition was filed before the expiry of three years after the celebration of the marriage, I note leave to proceed with the petition was granted by the High Court on 5th July, 2012. Thus this petition is properly before the court.

The behaviour of the respondent towards the petitioner who was her husband was downright unreasonable if not cruel. To constantly hurl abuses and hit one's spouse cannot be a civilized way of conducting marital life. The petitioner has testified to two instances of adultery by his wife. This has not been denied. One instance even involved a counselor who had been brought into help the parties resolve their differences. This person who clearly is not worthy of the title counselor proceeded to betray their trust. It is clear that in the circumstances married life was not favourable. The petitioner had no option but to walk out. His attempts to seek reconciliation through family has been fruitless. I find that the grounds of both cruelty and adultery have been established. I therefore allow this petition for divorce. Decree nisi to issue to be made absolute within three (3) months of today's date. I make no order on costs.

Dated and delivered in Mombasa this 11th day of April, 2014.

M. ODERO

JUDGE

In the presence of:

No Appearance by either party

Court Clerk Mutisya