REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 15 OF 2006

C V A A S…….Petitioner

Versus

S V K S……RESPONDENT

J U D G M E N T

The Petitioner and the Respondent were on 26th August 1999 married under the Hindu traditional marriage rites at Arya Samaj Mandir E- 3/1, Mahaveer Nagar (Bhopal (M.P), India. After the celebration of the said marriage, the Petitioner and the Respondent cohabited together as husband and wife in Nairobi. The marriage has not been blessed with any issue. The Petitioner is a French national domiciled in Morocco. The Respondent is an Indian national domiciled in Kenya. The Petitioner and the Respondent were residents of Kenya for a period of three (3) years immediately proceeding the commencement of these proceedings. This court therefore assumes jurisdiction on the basis of domicile of the parties to this petition for divorce. According to the Petitioner, since the celebration of the said marriage, the Respondent had treated her with cruelty. In the particulars of cruelty, the Petitioner accused the Respondent of showing no care or giving little or no emotional support to her, being verbally abusive and exhibiting violent tendencies, neglecting his responsibilities as a husband by failing to provide her basic needs and denying the Petitioner conjugal rights. She further accused the Respondent of falsely accusing her of engaging in adulterous affairs. In the premises therefore, the Petitioner pleaded with the court to grant her petition for divorce. She also prayed that the court orders the Respondent to provide maintenance for her upkeep. She prayed to be awarded costs of the petition.

When the Respondent was served, he duly entered appearance and filed his amended answer to the petition. He also cross-petitioned for divorce. In the answer to the petition, the Respondent denied the particulars of cruelty and desertion as alleged in the petition for divorce. He put the Petitioner to strict proof thereof. The Respondent averred that he had at all material times treated the Petitioner with love, care, affection and respect. He stated that he had fulfilled his duties as a husband as agreed with the Petitioner. In particular, the Respondent averred that he had paid the larger proportion of rent, bills and household expenses. He averred that the Petitioner chased him out of their matrimonial bed thereby denying him his conjugal rights. The Respondent further accused the Petitioner of infidelity. According to the Respondent, the Petitioner earns sufficient income to comfortably maintain herself.

In his cross petition for divorce, the Respondent averred that since the celebration of the said marriage the Petitioner had treated him with cruelty. He accused the Petitioner of being verbally and physically abusive towards him, of subjecting him to humiliation and of committing adultery. The Respondent averred that the Respondent threatened to get him sacked from his employment. He further accused her of falsely accusing him of engaging in adulterous relationships. For these reasons, the Respondent was forced to move out on the matrimonial home in the year 2005. The Petitioner and the Respondent have since been separated. The Respondent states that the Petitioner is a woman of means capable of providing for herself. He therefore urged the court to dismiss the petitioner's petition and grant his cross petition for divorce.

At the hearing of the petition, it was only the Respondent who was present in court. He reiterated the contents of his answer to the petition and cross petition for divorce. He told the court that during the subsistence of the marriage, the Petitioner subjected him to cruelty. He accused the Petitioner of harassing him. He complained that the Petitioner was stubborn, that she denied him his conjugal right and was a difficult person to deal with. For these reasons, he urged the court to grant his cross- petition for divorce.

This court has carefully considered the pleadings filed by the parties to these divorce proceedings. From the facts of this case, it is clear that the marriage between the Petitioner and the Respondent has indeed irretrievably broken down with no possibility of salvage. The accusations and counter accusations of cruelty and adultery should thus be seen in this context. The testimony of the Respondent clearly showed that the Petitioner and the Respondent no longer related as husband and wife. They have been separated since 2005. This is a period of more than nine (9) years. Neither the Petitioner nor the Respondent seems to have any wish or desire to sustain the marriage. If there was any chance of reconciliation, the same would have been attempted in the intervening period. This court will therefore grant the cross petition for divorce on the ground of desertion.

In the premises therefore, the marriage celebrated on 26th August 1999 at Arya Samaj Mandir E-3/1, Mahaveer Nagar (Bhopal (M.P), India between the Petitioner and the Respondent is hereby dissolved. Decree nisi dissolving the said marriage is hereby issued. The decree nisi shall be made absolute thirty (30) from the date of this judgment. There shall be no orders as to costs. It is so ordered.

DATED AT NAIROBI THIS 3RD DAY OF APRIL, 2014

L. KIMARU

JUDGE