



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

DIVORCE CAUSE NO.11 OF 2013

J.N.O PETITIONER

AND

D.O.O RESPONDENT

JUDGMENT

1. In the petition dated 28th August 2013, J N O, the petitioner herein urged this court to dissolve the marriage between her and D O O the Respondent herein. She listed three (3) main grounds:-
 - i. *Neglecting and/or ignoring the petitioner and not concerned with her future well being;*
 - ii. *Making hasty decisions of leaving the matrimonial home without discussing and/or informing the petitioner;*
 - iii. *The petitioner and respondent have been living and leading separate lives for over 10 years now.*
2. The petition and the verifying affidavit were duly served upon the respondent but the same did not attract any answer. This court on 10th February 2014 directed this matter to be placed before the Deputy Registrar for further appropriate directions but it was confirmed that directions were given on the 25th November 2013 paving the way for the hearing of the petition. Later on the Deputy Registrar ordered that the matter be set for formal proof on the 11th March 2014.
3. On the 11th March 2014, the petitioner J N O duly sworn on the Bible and in support of petition told the court that she is a teacher by profession living in Jogoo village within Kisii town. That she got married to D O O on 2nd October 1982 at the Sheria House in Nairobi. She produced her Marriage Certificate No. [Particulars Withheld] dated 2nd October 1982 in support of the fact of marriage.
4. She testified further that after the marriage they got 2 children namely:-
 - i. *E O O born on 6/6/1983; and*
 - ii. *G K O born on 25/8/1984.*
5. That they were living in Nairobi before she got a transfer to Kisii. That on 9th July 2001 the respondent decided to walk out of the home without informing her or thinking of her future and without any discussions as to what the matter was. That since then he has never come back and she has never seen him, thus signifying that he is not interested in her.
6. She also stated that what the respondent did has tortured her and she now wants the court to determine the marriage by dissolving it. She is praying for a certificate of divorce and the costs of this divorce.
7. PW2, E B O who was the petitioner's only witness told the court that she is a retired teacher and

- lives within Kisii town. That the petitioner in this case is her younger sister, while she (PW2) is the 1st born and the petitioner (PW1) is the fourth born. She testified that she saw the petitioner grow up and go to college and also knew when she fell in love with D O O before the two eventually got married in Nairobi at Sheria House.
8. She further testified that the said marriage was blessed with two children – E O born in 1983 and G a girl born in 1984. That soon after the birth of the children, the marriage started undergoing problems especially financial problems because the respondent could not provide for his family forcing their parents to provide food for the petitioner and her family. Her (Petitioner's) small salary could not sustain them and the petitioner suffered financially and emotionally but as a family they encouraged her to stand up for her children. Both the children have grown and are over 18 years of age.
 9. PW2 further testified that she remembers that around 2001 the respondent ignored the petitioner and did not want any reconciliation. He (respondent) told them that he had moved on with his life.
 10. She testified that her sister (petitioner) has also now moved on with her life and has now decided that after 10 years she can let go of that marriage hence these proceedings.
 11. PW2 also stated that according to her sister's (Petitioner's) age, she could have had more than 6 children but because of the problems in the marriage she stopped at 2 for whom she was grateful.
 12. PW2 also told the court that she had not colluded with the petitioner to come to court to testify but that she came to court because she had seen her sister suffer and since the constitution allows them a voice it is her plea (PW2's) to this court that the petitioner be granted her request for divorce. She says that she is 63 years old and that she cannot give false testimony in court.
 13. Having considered the evidence by the petitioner and her witness the following issues are for my determination:-
 - *First whether or not the petitioner has established that the respondent herein deserted his matrimonial home;*
 - *Secondly whether the respondent herein abdicated his responsibilities and neglected/ignored the petitioner and was not concerned with her future well being; and*
 - *Lastly whether or not the petitioner herein is entitled to the orders prayed for in the petition.*
 14. To begin with this dispute is in respect of a marriage registered under the **Marriage Act Cap 150** of the **Laws of Kenya**.
 15. It is clear to me from the evidence on record that the respondent herein deserted his matrimonial in 2001. He has not communicated to the petitioner for 10 years and he has also not replied to the petition which means he is not interested in the said marriage. I also find that the respondent has abdicated his responsibilities as a father.
 16. For the reasons above stated, I hereby dissolve the marriage celebrated between the petitioner and respondent on 2nd October 1982. Decree Nisi shall issue forthwith and shall be made absolute after thirty (30) days. Since the children of the marriage are both over 18 years, there shall be no order as to custody. Costs are awarded to the petitioner.

Dated and delivered at Kisii this 30th day of May, 2014

R.N. SITATI

JUDGE

In the presence of:-

Present in person for Petitioner

N/A for Respondent

Mr. Edwin - Court Assistant