

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

DIVORCE CAUSE NO. 42 OF 2012

C C K.....PETITIONER

VERSUS

D S M.....RESPONDENT

JUDGMENT

The petitioner **C C K** has filed this petition dated 15th August, 2012 seeking orders that

“(a) The marriage between the petitioner and the respondent be dissolved.

(b) An order for costs to be made.”

The respondent **D S M** was duly served with both the petition and a notice to enter appearance. He failed to enter appearance and also failed to file any reply to the petition. The matter therefore proceeded as an undefended cause.

The petitioner testified before me on 31st March, 2014. She told the court that she and the respondent got married on 21st August, 2010 at the Sanctuary Church in Tudor, Mombasa. The annexed marriage certificate serial number [Particulars withheld] provides proof of the fact of the marriage. The petitioner told the court that problems between the couple started immediately. During their honeymoon the respondent would demand that she wake up at 5.00 a.m. in order to prepare his breakfast. The respondent who was a pastor would decree that they must both wake up at 4.00 a.m. to pray. Whilst it is good and admirable to pray, the desire to pray cannot be imposed – it must come from the heart. In addition the respondent drew up a list of directives which he demanded that the petitioner sign and follow. He demanded that she hand over all her salary to him. It would appear that the respondent was trying to run his marriage like an army regiment. This is not conducive to a peaceful union. The behaviour of the respondent towards the petitioner was unreasonable. The crux of the problem between the two was their inability to bear children together. The respondent blamed the petitioner for this failure –despite the fact that the petitioner had sought medical intervention and nothing was found to be amiss with her. The respondent on his part declined to attend for a medical examination. None of the allegations made by the petitioner have been challenged and/or controverted. The respondent opted not to participate in these proceedings. I have no reason to doubt the veracity of the petitioner. The behaviour of the respondent as I have stated was unreasonable. A marriage is built by communication and consensus not through orders and directives. The petitioner told the court that even despite counseling by their church bishop nothing changed. Eventually she had to leave the matrimonial home in October, 2011. Since then the couple have lived separate lives. The respondent clearly has no interest in resolving their disputes. It would be unfair to expect the petitioner to remain in such difficult circumstances. The marriage has broken down. I therefore allow this petition for divorce. Decree nisi to issue to be made absolute within three (3) months of today’s date. No order on costs.

Dated and delivered in Mombasa this 18th day of June, 2014.

M. ODERO

JUDGE

In the presence of:

Ms. Ndetto for Petitioner

Court Clerk Mutisya