



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MOMBASA

DIVORCE CAUSE NO. 50 OF 2013

G J H O.....PETITIONER

VERSUS

L M B J O.....RESPONDENT

JUDGMENT

The petitioner **G J H O** has filed in court this petition dated 24th June, 2013 seeking orders

- “(a) **THAT** the said marriage between the petitioner and the respondent be dissolved and decree nisi to issue forthwith.
- (b) **THAT** this Honourable Court be pleased to make any further or other orders as it may deem just and fit to grant.
- (c) **Costs of the suit.”**

The respondent having been duly served with the petition filed on 30th August, 2013 a statement in reply. The matter proceeded for interpartes hearing on 31st March, 2014 when both parties testified in court. **MRS. KIPSANG** Advocate acted for the petitioner whilst **MS. MWATU** appeared for the respondent.

The undisputed facts of the case were that the petitioner and the respondent who are both Canadian citizens met and got married under a Catholic ceremony on 28th June, 1974 in Montreal, Quebec in Canada. A copy of their marriage certificate serial number [Particulars withheld] issued by the Government of Quebec is proof of the marriage. The couple started off their married life in Canada. Their union was blessed with three (3) sons namely

- L O born on 5th September, 1975
- D O born on 6th April, 1978
- R O born on 7th May, 1986

Given their dates of birth all three sons are now adults who live in Canada and manage their own lives.

The petitioner who worked in the Cement Industry was first transferred to work in Ndola – Zambia by his employer La Farges. As a good wife the respondent accompanied him to Africa. They lived in Zambia for 2 ½ years. In 2008 the petitioner’s company transferred him to Mombasa where the Bamburi Cement

Factory was located. Once again the respondent moved with her husband and the couple settled in a home in the Bamburi area of Mombasa. However it would appear that the move to Africa signaled the beginning of the end for their union.

On his part the petitioner claims that when the couple came to Kenya the respondent became unruly and would spend nights out of the matrimonial home. She would return home only when he was leaving to work. The couple began to quarrel and sexual relations between them ceased.

The respondent however tells a different story. She alleges that it was the petitioner's adulterous behaviour which led to problems and quarrels in the home. She alleges that the petitioner would engage in adulterous affairs when she travelled back to Canada to visit their children. The respondent admits that she did on occasions sleep out of the home but states that she spent nights with a female friend due to stress from the petitioner's behaviour.

I listened carefully to the evidence of both parties and I did also observe their demeanour. It was clear to me that the person who was most distressed by the marital breakup was the respondent. She said that she felt cheated having sacrificed leaving her home and children behind for her husband's career only to have him turn his back on her when they got to Kenya. Under cross-examination the petitioner readily admitted that he was in a new relationship with a woman known as E with whom he was planning to travel to Canada. The petitioner commenced this relationship before his marriage to the respondent had been dissolved. The petitioner also did admit that he was receiving sms messages on his phone from this lady. In those circumstances it is not surprising that the respondent would leave and seek refuge in a friend's house. It must have been very upsetting for her to live with a man who was openly engaging with another woman.

On her part the respondent also admitted to having had a brief affair with another man. The couple readily admit that since 2009 they have been separated. The clear picture is of a marriage which has irretrievably broken down. The petitioner is actively pursuing a relationship with another woman and no doubt wants a divorce to end his ties to his wife. On her part the respondent who greatly regrets and is distressed by the breakdown of their 35 years union concedes that the marriage is over and says she will not oppose the divorce. It serves no purpose to keep tied in matrimony a couple who clearly now want to go their separate ways. For the past five (5) years they have lived separately. The respondent only prayed for alimony and consent was reached between the couple in this regard. I therefore allow this petition for divorce. Decree nisi to issue to be made absolute within three (3) months of today's date. The consent regarding alimony is hereby adopted as an order of this court as follows

1. The petitioner to pay to the respondent an initial lump sum payment of 10,000.00 Canadian dollars.

2. Thereafter the petitioner to pay the respondent the sum

of 1,750 Canadian dollars per month for the next seven (7) years or if he dies before seven (7) years then she will receive this payment for five (5) years.

3. The petitioner to release to the respondent all the household goods in Canada **except** for his motor-cycle.

It is so ordered.

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

M. ODERO

JUDGE

In the presence of:

Mrs. Kipsang for Petitioner

Mrs. Mwatu for Respondent

Court Clerk Mutisya