

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

DIVORCE CAUSE NO. 86 OF 2013

C M.....PETITIONER

VERSUS

S M S.....RESPONDENT

JUDGMENT

The petitioner **C M** has filed this petition seeking the dissolution of her marriage to the respondent **S M S**. The respondent was duly served with both the petition as well as a summons to enter appearance. He failed to file any documents in response. The matter proceeded as an undefended cause.

The petitioner testified before the court on 16th June, 2014. She told the court that she is a British citizen who has lived in Ukunda in Mombasa County for the past fifteen (15) years. On 16th November, 2006 she and the respondent who is a Kenyan citizen got married at the office of the Registrar. The annexed copy of their marriage certificate serial number [Particulars Withheld] provides sufficient proof of the fact of the marriage. The couple bore no children together although each of them had children from previous relationships. The petitioner alleges that the respondent engaged in adultery during the course of the marriage and that he was also cruel towards her. She states that the respondent was in the habit of disappearing from the matrimonial home for days on end. She later learnt that he had sired a child with another lady whilst they were still married. Attempts made by the petitioner to seek reconciliation through family members bore no fruit. She states that she gave the respondent several chances to mend his ways but things did not improve.

The testimony of the petitioner remains unchallenged and/or uncontroverted since as stated earlier the respondent opted not to participate in these proceedings. As a court I have no reason to doubt the veracity of the petitioner's testimony. Section 66(2) of the Marriage Act, 2014 provides for the grounds upon which a civil marriage maybe dissolved. These grounds include cruelty and adultery.

The petitioner claimed that the respondent was in the habit of disappearing from the matrimonial home for days. She would not know where he was and the respondent would not communicate. This no doubt would leave the petitioner in a state of uncertainty and apprehension. Such behaviour does in my view amount to cruelty. If the respondent needed to be away from the home for some legitimate cause and/or reason then I have no doubt he would have been happy to divulge his whereabouts.

The petitioner told the court that she learnt that the petitioner had sired a child with another woman. This allegation was not denied. The act of siring a child with a woman other than his wife during the subsistence of the marriage is clear proof of the fact of adultery. This amounts to a valid ground for divorce. The petitioner stated that she has made attempts to seek reconciliation through family members but with no success as the respondent declined to participate in any such talks. She states that she now seeks a divorce. From her narration one gets a sense of her anguish and desperation. I find that the grounds of cruelty and adultery have been proved and as such I do 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 8th day of August, 2014.

M. ODERO

JUDGE

In the presence of:

No Appearances