

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 52 OF 2010

G A APETITIONER

VERSUS

K C CRESPONDENT

J U D G M E N T

The Petitioner, G A A filed a petition seeking to be divorced from the Respondent, K C C. In her petition for divorce, the Petitioner averred that she got married to the Respondent on 2nd December 2003 at the Registrar's Office in Nairobi. The marriage was celebrated under the **Marriage Act**. According to the Petitioner, prior to their statutory marriage, she has cohabited with the Respondent as husband and wife since 1996. The Petitioner is a Kenyan citizen while the Respondent is a Nigerian Citizen. He is currently resident in Nigeria. The marriage has been blessed with three (3) issues, C C born on 9th September 1997, S I C born on 7th February 2002 and W C C born on 30th April 2004. The Petitioner and the Respondent have, during the subsistence of their marriage, resided in various estates within the City of Nairobi. They finally settled in their matrimonial house at Lavington Dagoretti Lane, Off Naivasha Road. According to the Petitioner, the Respondent deserted from the matrimonial home in Nairobi in 2005 and relocated to Nigeria.

Since then, the Petitioner avers that the Respondent only returns to Kenya once a year for a week or two. The Petitioner states that the Respondent is guilty of willful neglect of her welfare and that of the children of the marriage and had denied her conjugal rights. She further accused the Respondent of treating her with cruelty, causing her to suffer mental distress and anguish. She alleged that the Respondent was cold and indifferent, verbally abusive and disregarded her opinion on issues affecting the family. She complained that the Respondent had refused to discuss issues concerning the welfare of the children of the marriage. According to the Petitioner, her marriage to the Respondent had irretrievably broken down with no possibility of salvage. She therefore urged the court to dissolve the marriage and make a further order directing the Respondent to provide maintenance for her upkeep and that of the children of the marriage. She also prayed that the court makes a determination as to the Petitioner's share in the matrimonial property. She further prayed to be awarded costs of the suit.

When the Respondent was served, he duly entered appearance. He filed an answer to the Petition. He denied the allegations of desertion and cruelty made by the Petitioner and put the Petitioner to strict proof thereof. According to the Respondent, in the year 2005, he applied for an extension of his work permit but the same was denied by the Immigration department. The Respondent states that he was forced to travel back to Nigeria where he could fend for his family. The Respondent avers that he has set aside time during holidays to visit the country and be with his family. He states that it was the Petitioner who denied him his conjugal rights. Finally, the Respondent denied that the Petitioner contributed towards the acquisition of the matrimonial property and put the Petitioner to strict proof thereof. The Respondent was of the view that his marriage to the Respondent has not irretrievably broken down and therefore prayed that the Petition for divorce be dismissed with costs.

During the hearing of the Petition for divorce, this court heard oral evidence adduced by the Petitioner in the presence of Counsel for the Respondent. The Respondent opted to rely on the bundle of documents supplied to court. The Petitioner gave her testimony in chief. In her testimony, the Petitioner reiterated the contents of her petition for divorce. She told the court that she has been separated from the Respondent since 2005. According to the Petitioner, since then, they have had irreconcilable differences. In her opinion, the marriage had irretrievably broken down with no possibility of salvage. The Petitioner

testified that the Respondent visited them but had prohibited the Petitioner and the children from visiting him in Nigeria. She told the court that since 2011, the Respondent had neglected his responsibility both as a parent and as a husband by not financially supporting the family. On the issue of the matrimonial property, the Petitioner contended that the same was jointly acquired by herself and the Respondent.

This court has carefully considered the pleadings filed by the parties to these divorce proceedings. The court has also considered the evidence adduced by the parties in support of their respective opposing positions. From the facts of this case, it was clear that the marriage between the Petitioner and the Respondent has indeed irretrievably broken down with no possibility of salvage. It is clear that the marriage between the Petitioner and the Respondent has been in doldrums since 2005. If there was any chance that the Petitioner and the Respondent were to be reconciled, then reconciliation would have been attempted in the intervening period. This court will therefore grant the petition for divorce.

In the premises therefore, the marriage celebrated between the Petitioner and the Respondent on 2nd December 2003 at the Registrar's Office in Nairobi is hereby dissolved. Decree nisi dissolving the said marriage is hereby issued. The decree nisi shall be made absolute thirty (30) days from the date of this judgment. As regards the issue of maintenance of the children, the same shall be canvassed at the Children's Court. On the issue of division of matrimonial property, parties are at liberty to file a case before this court for appropriate determination. There shall be no orders as to costs.

DATED AT NAIROBI THIS 26TH DAY OF SEPTEMBER, 2014

L. KIMARU

JUDGE