



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 55 OF 2012

K. M. M.....PETITIONER

VERSUS

A. M.....RESPONDENT

JUDGMENT

1. K. M. M the Petitioner filed a petition on 3/4/2012 seeking the marriage between her and the Respondent be dissolved, the Respondent to bear the costs of the suit and the Court to grant any further or other relief it may deem just and fit in the circumstances.
2. The Petitioner averred that on 4/7/2008 she was lawfully married to the Respondent A. M. under the Marriage Act Cap 150 (new repealed) as evidenced by the copy of marriage certificate attached to the petition No. **[Particulars withheld]**.
3. The marriage was blessed with one (1) issue M. M.M. Born on 2nd December, 2008, aged six (6) years respectively.
4. The couple cohabited in Nairobi; at various places; Statehouse Avenue, Andes Apartments Kilimani and Flat **[particulars withhheld]**, Sports road, Westlands.
5. According to the Petitioner, K. M. M the Respondent A. M during the subsistence of their marriage treated her with cruelty through willful neglect of her and the child of the marriage. The Petitioner had to meet all financial obligations and the Respondent had their utter contempt towards the said marriage and total lack of matrimonial commitment.
6. The Petitioner K. M. M stated that the Respondent A. M since the celebration of the marriage deserted her and the child of the marriage. In June, 2010 and since then following an altercation, on the care of the issue of the marriage, the Respondent left the matrimonial home and they have since lived separately.
7. The Respondent A. M upon having been served with the petition filed an Answer to petition and cross petition on 19/7/2012. He averred that the particulars of cruelty and desertion outlined in the petition are unfounded and untrue. Instead he alleged particulars of cruelty by the Petitioner as being combative, unappreciative, excessively demanding, arrogant and financially demanding, denied him conjugal rights.

He also stated that it is the Petitioner who deserted him as there was a mutual consent from the Petitioner for him to move out of the matrimonial home.

8. The Respondent sought, the Petition be dismissed with costs, the marriage be dissolved, the Petitioner be condemned to pay costs of this suit in the circumstances.
9. The Petitioner and Respondent obtained the Registrar's Certificate to proceed as a defended cause on 26/7/2012. On 24/9/2014 the Petitioner and Respondent outlined in detail their oral evidence and cross examination of each party, the content of their pleadings and grounds of divorce.
10. The Petitioner and Respondent before the hearing of the petition and cross petition amicably

agreed and reached consent of care and custody and control of the child of the marriage and maintenance of the child.

11. The Court has carefully considered the pleadings filed and oral evidence adduced by the Petitioner and Respondent. The issue for determination is a divorce. Although the marriage was solemnized under the Marriage Act it is now repealed law and in place is the Marriage Act, 2014. The Petitioner relies on two (2) grounds, namely cruelty and desertion. The basis of cruelty is lack of communication and the burden of shouldering all financial obligations.

On desertion, the Petitioner left in June, 2010. The Respondent on the other hand was combative and she denied him conjugal rights. Despite different reasons on cruelty and desertion by each party to the other, there is consensus that on both sides the marriage has irretrievably broken down.

12. Section 66 (3) of the Marriage Act 2014, outlines grounds for desertion of a Civil Marriage; cruelty, desertion and irretrievably broken marriage are relevant in this case. Section 66 (6) explains the constituents of an irretrievably broken marriage; this involves adultery, cruelty, willful neglect, separation for at least two (2) years before presenting the petition, for desertion for three (3) years, spouse's imprisonment, and spouse's incurable insanity.

In the instant case, case, the marriage has been adversely impacted by cruelty, desertion, willful neglect and separation for more than two (2) years.

13. Although the court's duty is to preserve the family as a fundamental unit in society under Act 45 of the Constitution; both the Petitioner and Respondent admitted they have not been in contact for a long time and did not wish to reconcile. The Court cannot keep either of the parties in misery it would amount to adding on to the emotional and physical cruelty.

14. Since both parties have not connived or colluded in the process and have established through the petition and cross petition that the marriage has irretrievably broken down. The Court will grant the dissolution of marriage as follows;

- a. The Marriage solemnized between the Respondent and Petitioner on 4/7/2008 is hereby dissolved.
- b. The consent by the Petitioner and Respondent on the care custody and upkeep of the issue of the marriage is adopted as an order of this Court. Each party is at liberty to apply to the Court for further orders.
- c. Decree Nisi to issue forthwith and decree absolute within thirty (30) days.
- d. Each party to bear it own costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28TH DAY OF OCTOBER, 2014.

M. MUIGAI

JUDGE

In the presence of:

Counsel for the Appellant.....

Counsel for the Respondent.....