



REPUBLIC OF KENYA
IN THE HGIH COURT OF KENYA AT NAIROBI
DIVORCE CAUSE NO 173 OF 2012

K.S.C.....PETTIONER

VERSUS

L.S.M.C.....RESPONDENT

JUDGMENT

The Petitioner and Respondent solemnized their marriage on 8/7/197 and were issued with a certificate of marriage, under the Marriage Act Cap 150 (repealed).

The Petitioner and Respondent cohabited in various areas in Machokos and Nairobi and have 2 issues of the marriage; D.K.L and D.C. who are 18 years and 13 years respectively.

The Petitioner filed the petition on 21/9/2012 and served the Respondent who on 25/10/2012 filed an Answer to Petition and Cross Petition. Both parties obtained in Registrar's certificate for the matter to proceed as a defended cause.

On 16/10/2014, the Petitioner informed the court that during the marriage, marital problems begun in 2005 when the Respondent begun coming home late and causing nuisance with the neighbours complaining of her conduct. The Respondent also went for trips on her own without communication with the Petitioner. They tried to resolve their differences and sought Church Counselling and the Respondent refused the same, claiming she was not consulted.

In 2005, the Respondent left the matrimonial home after a quarrel and she threatened to kill him, a matter the Petitioner reported to the Police Station. Despite all efforts she refused to come back, to the matrimonial home. In 2006, she came to collect her belongings while the Petitioner was way, when he came in, the Respondent hurled as stool at him and there was commotion in the house.

The Petitioner informed the court that all attempts of reconciliation have been futile. He seeks dissolution of the marriage and any other relief the court finds reasonable.

With regard to the children of the marriage there is an ongoing Children Cause No. 1178 of 2011 that shall resolve the matter pertaining to the children of the marriage.

The Respondent informed the court that the she was married to the Petitioner and they have 2 children. In 2005, she obtained sick leave due to a back problem. She stayed at home and when she was better, she begun to go out and meet her friends but the Petitioner was very controlling and he wanted her home early in the evening as he got home at 5 p.m.

The Respondent said she did not attempt to kill the Petitioner, she received text messages that she was

HIV positive. She asked the Petitioner when he came home about the text message and he denied sending the texts. She told him that if she was HIV positive then they would both die. The Petitioner left the house in a huff. He came back and said he reported the matter to the Police. She called her sister and brother-in-law and she decided to leave the home. Since then she never went back to the house except later when she went to collect her belongings. They have not succeeded in reconciliation and the Respondent wishes the marriage is dissolved.

The evidence on the Court Record and the oral testimony in court confirms that the Petitioner and Respondent have separated for about 9 years now.

The Petitioner outlined particulars of cruelty desertion and wilful neglect by the Respondent.

The Respondent outlined particulars of cruelty by the Petitioner in the Answer to Petition and Cross Petition. Both parties are clear that their marriage cannot and they do not want it salvaged at all.

Cruelty encompasses various acts, the effect of which is to cause, mental physical anguish and adversely impact on the social life of the victim party. The conduct of one party is such that a reasonable person would not be expected to live with such a party at all or any more. Each of the parties to this marriage have given detailed accounts of the conduct of the other party that amounts to cruelty on the victim party.

With regard to desertion, the Petitioner alleged the Respondent deserted him and the children of the marriage. The Respondent moved out of the matrimonial home in 2005 and left the Petitioner with the children of the marriage and she has never gone back. To amount to desertion, the victim party and the other party must be separated, herein, they have been separated for 9 years now, with an intention of the Respondent to desert the Petitioner. In the instant case, the Respondent stated she knew the Petitioner sent the text message and then reported the matter to the Police Station. She decided to leave her home and the Petitioner.

She did not tell the court how she knew that the Petitioner sent the text nor inform the court why she left the children of the marriage who had done nothing to her. This court finds the Respondent left with no consent of the Petitioner and if the text message was an isolated incident it did not warrant desertion and was not a just cause. Be that as it may, the Respondent deserted the Petitioner.

Finally, the Petitioner raised the ground of wilful neglect that the Respondent neglected to support the Petitioner financially especially with regard to maintenance of the children. This court will not delve in to this subject as it is a matter within the purview of the ongoing Children Cause 1178 of 2011 Nairobi Children's Court.

The upshot of the matter is that, the Petitioner and Respondent wish to dissolve the marriage and under Section 66 of the Marriage Act 2013/2014 the grounds of cruelty and desertion suffice as demonstrated by the testimony and pleadings of the parties. Therefore this court upholds the Petition and Cross Petition and Order;

- a. The marriage between the Petitioner and Respondent solemnized on 8/7/97 is dissolved.
- b. A decree nisi to issue forthwith.
- c. A decree absolute to issue within 30 days.
- d. No orders as to maintenance, the Respondent does not want anything from the Petitioner.
- e. The custody and up keep of the children of the marriage is the subject of Children Cause 1186/2011.
- f. No order as to costs.

READ AND SIGNED AT NAIROBI THIS 24TH DAY OF NOVEMBER, 2014.

Absence of Party/Counsel.

M. MUIGAI

JUDGE