

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
DIVORCE CAUSE NO. 21 OF 2014

CW L.....PETITIONER

VERSUS

H N.....RESPONDENT

JUDGMENT

The petitioner herein **CWL** has filed this petition dated 17th March, 2014 seeking the dissolution of her marriage to the respondent **HN**. The respondent on his part duly filed an Answer to Petition and a Cross-Petition in which he too sought the dissolution of the marriage. The parties testified before this court on 3rd November, 2014. The petitioner was unrepresented by counsel whilst the respondent was represented by **MR. NGAIRA** Advocate.

It is conceded between the parties that they got married to each other on 20th September, 2003 at the Church in Taveta. Following the marriage and due to commitments of work the petitioner lived and worked in Mombasa whilst the respondent lived in Nairobi. This is a common scenario in many unions where spouses are forced by circumstances of employment to live in different towns. However in this case both spouses confirm that they only cohabited as man and wife for a period of four (4) months. Due to disagreements they parted ways in April, 2004. From that time to the present they have neither met nor communicated. Each spouse testifies that the marriage has broken down irretrievably and each of them now seeks a divorce.

Prior to the Marriage Act 2014, the court would have required either the petitioner or the respondent to adduce evidence sufficient to prove the commission of a matrimonial offence by one spouse against the other. However in the Marriage Act 2014 the situation is vastly different. All the court requires is proof that the marriage has irretrievably broken down. Section 66(2)(e) of the Marriage Act provides that a marriage may be dissolved on a variety of different grounds one of which is “*the irretrievably break down of the marriage.*” Section 66(b) (d) goes on to provide that a marriage is deemed to have irretrievably broken down where

“(d) the spouses have been separated for at least two years, whether voluntary or by decree of the court.”

By this the law in Kenya has moved away from the culture of “*blame*” in cases of marital break-down. There is recognition of the fact that there may be a host of reasons not necessarily attributable to either spouse that can lead to marital break-down. Parties are allowed the option to bring to an end an unhappy, empty and often painful union in a dignified manner without necessarily having to engage in a no holds barred contest to prove fault on the part of their partner.

In this case by their own admission the couple only cohabited for four months as man and wife. They separated in April, 2004 and have continued to lead separate lives to date a period of ten (10) years. There can be no doubt that the marriage has indeed broken down. Each party states that no reconciliation is possible. Indeed if there was a possibility of reconciliation then I have no doubt such reconciliation

would have occurred long before now. I therefore allow this petition for divorce. Decree nisi to issue to be made absolute after three (3) months. Each party to meet their own costs.

Dated and Delivered in Mombasa this 18th day of November, 2014.

M. ODERO

JUDGE

In the presence of:

No Appearance by either party

Court Clerk Mutisya