

REPUBLIC OF KENYA

IN THE HIGH COURT AT MALINDI

DIVORCE CAUSE NO. 10 OF 2014

S K.....PETITIONER

VERSUS

R FRESPONDENT

JUDGEMENT

In her petition dated 5th May, 2014 the Petitioner is seeking to have her marriage to the Respondent dissolved. The grounds for the petition are indicated as desertion and cruelty. The Petitioner testified that she got married to the Respondent on 9th October, 2012 while she was a student at [Particulars withheld] University.

It is her evidence that soon after the marriage the Respondent went to Italy and called his friend informing him that he would like to divorce her. At one time the Respondent pushed her out of his house and threatened to use his belt to beat her. The Respondent was living at Malindi while the Petitioner was schooling at Kilifi. The Petitioner admits that the Respondent bought her some necessary materials for her education and paid the university fees for her fourth year.

It is the Petitioner's contention that the Respondent has been asking for divorce. At one time they both visited an advocate in Malindi and were advised on divorce procedures. The Petitioner visited Italy where the Respondent comes from in October, 2013. Since March, 2014 the parties have been living separately.

On his part the Respondent admits getting married to the Petitioner on 9th October, 2012. He denied the allegations of cruelty. It is his evidence that one day the Petitioner went to his house at Malindi. While he was with his sister and he asked the Petitioner to leave. He never threatened to beat the Petitioner. According to him, the Petitioner was living in a house in Kilifi which house he used to pay the rent while he was living in Malindi. The Petitioner slowly removed her items from the Malindi house and after sometime he discovered that all the Petitioner's clothes including kitchen items were missing. He asked the Petitioner to take him to the Kilifi house but she refused. The Petitioner would come to Malindi and stay for one hour and return to Kilifi after asking for some money.

From the evidence on record, it is clear that there is no love between the two parties. The allegations of cruelty on the part of the Respondent have not been established. There is no evidence that the Respondent ever assaulted the Petitioner. The allegation that the Respondent went to Italy and left the Petitioner in Kenya cannot amount to desertion. The Petitioner knew the Respondent comes from Italy and that was where he was working.

According to the evidence, the Petitioner is no longer interested in the marriage. Since a marriage involves the consensus of both parties, the court cannot impose one party on the other and force the two to be married. There is no love between the two. Each party is willing to go his/her own way. The court tried to have the parties reconcile but the two could not agree.

It is my finding that the marriage has irretrievably broken down. Each party lives separately and is no longer willing to continue with the marriage. I do hereby dissolve the marriage between the Petitioner and the Respondent. A Decree Nisi shall issue forthwith.

With regard to the claim by the Petitioner for some property left in the Respondent's house, I do find that

the claim has not been proved. The Respondent should hand over the big envelope containing the Petitioner's documents and those shall be the only items to be given to the Petitioner by the Respondent. Each party shall meet his/her own costs.

Delivered and Dated in Malindi this **18th** day of **December, 2014** in the presence of:

Said J. Chitembwe

JUDGE