



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
PROBATE, DIVORCE & FAMILY DIVISION
DIVORCE CAUSE NO. 200 OF 2012

J R B.....PETITIONER

-VERSUS-

D K V S.....RESPONDENT

JUDGMENT

1. J R B the petitioner in this cause filed a petition against D K V S the Respondent. The petition is dated the 29/10/12. In her petition she seeks that their marriage be dissolved and divorce be granted. She also seeks custody of their children plus maintenance. Her grounds of divorce are cruelty as particularized at paragraphs 7(a) to (s) of her petition.
2. The Respondent filed an answer to the petition and cross petition on the 23/5/13. He denies the allegation of cruelty as particularized by the petitioner. In his cross petition he too seeks that the marriage between him and the petitioner be dissolved. He seeks custody of the minor children and that their maintenance of the minor children be shared equally between the petitioner and him equally.
3. Each party testified at the hearing. The Petitioner stated that she married the Respondent in 2003 under Hindu customary rites and they were given a marriage certificate, exhibit No. 1. After their marriage they lived together with her in laws at Parklands for six (6) years and then they moved to their own house which they rented in Ngara area. They have 2 children who are now 11 and 10 years respectively. That for the last 3 years they have not lived together. After they moved to their own house the Respondent did not take responsibility as the head of the family. He did not eat in their house, he was always with his family, he did not contribute to the house though he paid rent; that they he did not spend time with her and they had no normal sexual relations after they moved to their house. That one day the Respondent left and he did not return. She was seriously sick at the time he left.
4. That before she came to court they went before the community and elders; that it has been difficult for her and that the marriage cannot work. That the children's court granted her custody of the children but she seeks maintenance. On being cross examined the petitioner denied that her parents were opposed to the marriage; that she did not contribute to the breakup of the marriage and that did not she deny him conjugal rights. She stated that the Respondent would come home late and drunk and would sleep in a separate room. She stated that her salary is Kshs. 40,000/-, she has the children and he is paying school fees for the children and medical.
5. The Respondent testified that he currently earns 40,680/-. He denied being cruel to the petitioner.

He testified that she was cruel to him, that she was abusive, she did not assist with the children's homework, she would cook when she wanted, she slept in the children's room and the he did not deny her conjugal rights. He admitted that they went before their community but it did not work out. He denied abusing or hitting her and stated that her side of the family interfered with their marriage. He admitted that they exchanged words. That when he went out he would tell her where he is and that his drinking did not ignite her problems. He gave examples of how his mother in law made life difficult for him. The Respondent testified that their marriage has completely broken down and that he decided they separate because the children were being affected. He admitted that the pays the children's fees and medical expenses but requested that the petitioner maintains herself.

6. Parties chose to rely on their evidence adduced. There is no dispute that the petitioner and the Respondent married on the 16/11/03; that they lived together after their marriage and have 2 issues out of the said marriage. There is also no dispute that currently they are separated and that the petitioner has the children. The Respondent pays their fees and takes care of their medical. It is also not in dispute that the parties went before elders in their country when things were not working out.
7. I have considered the evidence adduced by the parties. Section 10 of the Hindu marriage and Divorce Act Chapter 157 of the Laws of Kenya outlines the grounds of divorce one of them being cruelty. The ground pleaded by each party is cruelty. Having heard both parties, I find that the petitioner recalled specific instances of the Respondent's cruelty to the extent that one day the Respondent left house with the children. What happened between them caused her mental anguish and she had to move to court. It is the Respondent who walked out. The petitioner has adduced evidence that they went before their community but things did not work out. I find that the petitioner has proved her ground of cruelty. The Respondent has failed to persuade this court that the Petitioner was cruel as alleged by him. He did not deny walking out of the marriage. I therefore dismiss his cross petition as his evidence did not prove the petitioner was cruel to him.
8. Having made a finding that the petitioner has proved the case, I find too that the marriage between the petitioner and the Respondent has irretrievably broken down. They have been separated for the last 3 years and there appears to be no chance that they will get back together as husband and wife. I therefore dissolve the marriage between **J R B** the Petitioner and **D K V S** the Respondent that was celebrated on the **16th November 2003** at the Shri Kutch Satsang Swaminarayan Vishranti Bhuvan in Nairobi. The Petitioner has already been granted custody of the 2 issue of the minor. The Respondent shall continue to pay the school fees and medical care of the 2 issues. The petitioner sought maintenance but there is no evidence on to support this claim and therefore am unable to make an order for maintenance. A decree *nisi* shall issue and be made absolute with thirty (30) days from the date hereof. Each party shall bear own costs.

Orders Accordingly.

Dated, signed and delivered this 17th Day of December 2014

R. E OUGO

JUDGE

In the Presence of:

..... **PETITIONER**

..... **RESPONDENT**

M/S CHARITY

COURT CLERK