



REPUBLIC OF KENYA

High Court at Mombasa

Divorce Cause 7 of 2012

C.N.N PETITIONER

=VERSUS=

J.N.M RESPONDENT

JUDGEMENT

This is the Petition of C N N (hereinafter referred to as *‘the Petitioner’*) seeking:

- “a) That the marriage between the Petitioner and Respondent be dissolved.***
- b) That the Respondent be condemned to pay the costs of these proceedings.***
- c) That the Petitioner may have such further relief as the Honourable Court may deem fit to grant”***

The Respondent **J N M** despite having been properly served with both the Petition as well as the summons to enter appearance did not file any papers in response. The matter therefore proceeded as an undefended cause.

The Petitioner in his evidence told the court that he and the Respondent got married on 22nd December 2001 at the Holy Ghost Cathedral in Mombasa. He produced a certified copy of the Marriage Certificate S/No.[PARTICULARS WITHHELD] as proof of this fact **Pexb1**. Their union was blessed with three children

- 1) D.M – aged 22 years (adopted)
- 2) F.N.N – 15 years
- 3) P.M.N – 11 years

The couple cohabited as man and wife from the year 2001 to 2010. On 1st December 2010 the Respondent moved out of the matrimonial home. She rented accommodation and declined to return to the Petitioner. Hence this divorce petition.

The law on Marriage and Divorce is to be found in the Matrimonial Causes Act Cap 152 Laws of Kenya. Section 6(1) of the Matrimonial Causes Act provides:

“6(1) No petition for divorce shall be presented to the court unless at the date of presentation of the petition three years have passed since the date of the marriage”

In this case the couple celebrated their marriage in December 2001. This petition for divorce was filed on 26th January 2012 a full ten (10) years after the marriage. As such I find that Section 6(1) has been properly complied with and that this petition is properly before this court.

The grounds upon which the courts may grant a divorce are provided for in Section 8 of Cap 152. These include:

- Adultery
- Cruelty
- Desertion
- Mental incapacity

In his evidence the Petitioner told the court that although the couple cohabited for eight (8) years their union was riddled with quarrels and disagreements. He stated that the Respondent had a habit of spending nights outside of the matrimonial home. The Petitioner also alleged that the Respondent engaged in extra-marital affairs. However he has not tendered any evidence to prove this particular allegation. The Petitioner proceeded to narrate how the Respondent would deny him conjugal rights claiming that he must make an “*appointment*” with her for sex. Clearly this action amounts to psychological cruelty. A marriage cannot be run on the basis of appointments. As stated earlier the Respondent made no reply to the petition, thus the Petitioner’s evidence remains uncontroverted.

The Respondent finally moved out of the matrimonial home in December 2010 and rented her own separate accommodation. If there was a valid reason for this action the Respondent has chosen not share that reason with the court. It is entirely unreasonable and amounts to cruelty for one spouse to physically separate herself from the other and expect that the marriage will remain intact. Her actions indicate that the Respondent wanted nothing further to do with her husband. The Petitioner told court that efforts were made by friends and family including his mother to reconcile the couple to no avail. It is clear that this marital union has broken down. It would serve no purpose for the courts to try to maintain a shell of a marriage. I therefore do allow this petition for divorce. Decree nisi to issue to be made absolute after the expiry of six (6) months from todays date.

No orders on costs.

Dated and Delivered in Mombasa this 31st day of October 2012.

M. ODERO
JUDGE

In the presence of:

Ms. Anyumba holding brief for Mrs. Nzioka for Petitioner