



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

DIVORCE CAUSE NO. 39 OF 2008

J.G.N.....PETITIONER

VERSUS

M.L.....RESPONDENT

J U D G M E N T

The Petitioner on 31.07.2008 lodged this Petition under the Matrimonial Causes Act, Cap 150 and Rules made there under and in which he seeks the following orders:-

(a)A declaration that the Petitioner's marriage with the Respondent has irretrievably broken down and a decree of Divorce do issue.

(b)That the Respondent pays the costs of the Petition.

The Petitioner a Christian by faith on 10th February 2004 when he was a bachelor married the Respondent at a marriage ceremony solemnized at the Registrar's office in the Mombasa District of the Republic of Kenya.

The Petitioner states that after the celebration of the said marriage the Petitioner and Respondent lived and cohabited as husband and wife at Kilifi District and later in Italy. They did not get any children in the said union.

The Petitioner adds that he is a businessman while the Respondent is a retired cook.

The Petitioner cites grounds of cruelty for seeking divorce namely:-

- (i) That the Respondent has on several occasions shouted at him in front of their guests and friends.
- (ii) That she hurled insults at him calling him names.
- (iii) That she allowed her kin and daughter to interfere with the marriage and to control the affairs of the family.
- (iv) That the Respondent on several occasions called him a looser, a failure and good for nothing man.
- (v) Denied him his conjugal rights saying that she had better be without a man than sleeping with the Petitioner.

The Petitioner also pleaded desertion by the Respondent. He claimed that the Respondent left the matrimonial home without any provocation causing the Petitioner a lot of anxiety and mental anguish.

The Petitioner alleged that during the marriage the Respondent committed adultery but gave no particulars or any names.

The Petitioner duly caused the service of the petition and Notice to Appear on 20th August 2008. She received the petition and Notice and duly accepted service by signing on the back and endorsing a statement that:-

“I receive by M. L. I’ve no OBJECTION to divorce being granted as I will not be in Kenya for hearing case can be heard in my absence.”

The Petitioner despite this also effected service of the hearing Notice on the Respondent on 4/2/2010. She acknowledged receipt of the hearing notice as shown by affidavit of service on record.

At the trial the Respondent did not appear. The petitioner testified on oath.

Upon consideration of the Petition and the testimony of the Petitioner, I do find for a fact that the Respondent is no longer interested in the marriage with the Petitioner. I do find that she left the matrimonial home and does not wish to continue her marriage with the Petitioner. This conduct amounts to desertion.

I therefore do find that the marriage between the Petitioner and the Respondent which was solemnized on

10th February 2004 and registered on the same date has irretrievably broken-down.

I therefore do hereby order the dissolution of the said Marriage and grant divorce. There shall be no order as to costs.

Dated and Delivered at Mombasa this 13th day of January 2011.

M. K. IBRAHIM

J U D G E

Coram:

Mr. Justice Ibrahim
Court clerk – Kiponda
Mr. Njiru for the Petitioner

Judgment delivered in their presence.

Ibrahim, J