

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Divorce Cause 152 of 2008

FC..... **PETITIONER**

VERSUS

RESPONDENT

SAC.....

J U D G M E N T

The Petitioner, FC and the Respondent SAC, got married on 19th December, 1995 at the Registrar-General's office, Nairobi. They obtained a marriage Certificate Serial No. [particulars withheld] of the same date. They cohabited as husband and wife first at Westlands and later in other situations in Nairobi. They got no child.

In June 2008, the spouses separated, with the Petitioner now residing in England while the Respondent lives in Kenya. This came about, according to Petitioner's evidence, because the spouses discovered that they did not love each other. Particularly, the Respondent told the Petitioner so.

The Petitioner also testified that the Respondent was cruel to her. That he abused her both physically and psychologically. That he could leave the matrimonial home without explaining the Petitioner where he was going. Nor would he explain when he came back. The Petitioner also testified that while the Respondent went out for social occasions often without taking her, he forbade her staying with her friends even those who came to see her at home. That she tried to maintain the home and the relationship, but the Respondent continued treating her with contempt.

The result, she testified, was that her health began to deteriorate. She now has serious stress and hypertension. She found she could not go on like that. Appeals to the Respondent to change fell on deaf ears, she added. The Petitioner concluded that she has to go out of the marriage to save her health. The marriage also has irretrievably broken down. Her entreaties have failed to change the Respondent.

The parties have signed a family settlement on dissolution of the marriage herein marked Exhibit I. She also seeks costs of this petition.

I have carefully considered the evidence which came from the Petitioner. It was not controverted in any way. The Respondent who was served with the petition, did not file his Answer. He did not even attend court during the hearing, confirming his disinterest in the marriage. It is my view from the evidence of the Petitioner that the Respondent indeed treated the petitioner with cruelty. I am satisfied that his behaviour towards her, is the likely cause of her deteriorating health. I am further satisfied that choosing to opt out of the marriage is a wise choice in the circumstances of this case.

Finally, the marriage is without doubt irretrievably broken down without chances of saving it. In these circumstances, a better option, which also complies with public policy and the two parties' best interest, is to release either from the marriage. They will that way have an opportunity to start afresh if they so wish. I will on the above grounds dissolve the marriage.

ORDERS.

- 1) The marriage entered between FC and SAC on 19th December, 1995, is hereby dissolved.
- 2) A decree-nisi shall issue for three months with liberty to either party to apply to make it absolute.
- 3) The terms of the Deed of Settlement dated 2nd August 2008 and executed by the parties herein on the said date, shall be and is hereby made part and parcel of this court's judgment and the provisions thereof are hereby made orders of this court.
- 4) The Petitioner's costs of this petition shall be met by the Respondent.

Dated and delivered at Nairobi this 4th day of June, 2009.

D A ONYANCHA

JUDGE