

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Divorce Cause 147 of 2005

BSZPETITIONER

VERSUS

HG RESPONDENT

JUDGMENT

This is a petition for the dissolution of a marriage. It was filed by the Petitioner **MRS. BSZ** the wife of **HG** who is the Respondent. They were married on the 10th December, 1994 in Mombasa in accordance with the Hindu Law as per the Certificate of marriage tendered in evidence as exhibit 1. Following the marriage, the couple cohabited intermittently between the Respondent's family home in Nakuru and the United Kingdom. Currently the Petitioner resides in the United Kingdom and is a British National. The Respondent is domiciled in Kenya and upon Marriage as his wife, the Petitioner also acquired Kenyan domicile.

The marriage was not blessed with any children. The Petitioner has sought the dissolution of the Marriage with the Respondent on the ground that there has been constructive desertion on the part of the Respondent for more than three years immediately preceding the presentation of this petition. The particulars of the alleged constructive desertion on the part of the Respondent are given in the petition. However we are not concerned with the said particulars as we shall see later in this Judgment. Suffice to state that for over 3 years before the presentation of this petition for dissolution of marriage the couple have been living apart. Whereas the petitioner resides in the United Kingdom, the Respondent resides in Kenya.

When the petition was served on the Respondent, he responded by filing an answer to the petition and cross-petition. In his cross-petition the Respondent also sought the dissolution of the marriage on the ground that the Petitioner had deserted him. When the matter came up for the registrar's certificate on 15th December, 2005, Mr. Mburu, learned Counsel for the Respondent stated that the answer to the petition and cross-petition was filed out of time. Consequently he wished to withdraw the same. The Learned deputy registrar, acceded to the request and ordered thus:-

“... The answer to the petition is hereby withdrawn. Matter to proceed as undefended. Pleadings are in order. Hearing in Nairobi for one day as an undefended cause. Costs in the cause...”

Essentially what this order meant was that only the petition filed by the wife would be heard and determined as uncontested or undefended cause.

However when the hearing of the cause commenced before me, Mr. Muli Learned Counsel for the Petitioner informed the Court that the Petitioner did not wish to testify and call any witnesses. That the cross-petition shall in the circumstances be uncontested. This is what happened. There being no evidence led in support of the petition, it is only logical that the same be dismissed. I would therefore dismiss the petition for divorce lodged by the Petitioner on 8th August, 2005 for lack of evidence with no order as to costs.

Similar fate faces the cross-petition. As already stated the answer to the petition and cross-petition was by the order of the deputy Registrar withdrawn. There is therefore no cross-petition upon which the Respondent would have testified in support thereof and be granted the necessary reliefs. It is regrettable

and a matter of great concern to me that both Counsels knowing very well that the cross-petition had been withdrawn during the issuance of the registrar's certificate chose to mislead the Court that indeed the cross-petition was alive. Valuable Court time was as a result wasted on hearing a cause which did not exist in the first place. I was minded to impose sanctions on the said Counsels. However upon sober reflection and I have deemed it unnecessary to take that cause of action. There being no cross-petition upon which the Respondent would have testified in support thereof, his testimony is thus worthless and of no consequence. I would ignore it.

The upshot then is that the petition for the dissolution of the marriage is dismissed with no order as to costs. The answer to the petition and cross-petition having been withdrawn at the stage of granting the registrars Certificate, I make no orders on the same.

Dated at Nairobi this 1st day of March, 2006

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MAKHANDIA

JUDGE