



THE REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
Divorce Cause 164 of 2003

H.A.V.G PETITIONER

AND

D.M.K RESPONDENT

JUDGEMENT

In this petition for Divorce, the petitioner H.A.V.G petitioned for the dissolution of the marriage between him and D.M.K that was solemnized on 8th day of June 2000 at Bahari Beach Hotel in Mombasa as per the certificate of marriage No. [...].

Upon marriage the parties cohabited in Nyali and Tudor Estate in Mombasa. There are no issues between the parties. According to the petitioner who testified through an Interpreter, he stated that he came to Kenya in May 2000 and was visiting Bahari Beach Hotel as a tourist and on his last day of the visit on 17/5/2000 he met the respondent. The respondent was well known at Bahari Beach Hotel and he met the respondent whom he spoke to through an interpreter for a few hours as he left the country on the same day.

The petitioner who was then aged 69 years left the country and returned on 6/6/2000 when he was met by the respondent and was promptly informed that they were going to undergo a civil marriage on 8/6/2000. This marriage was also witnessed by Joseph Ogola and Rebecca Morris who were well known personalities to the Bahari Beach Hotel and also known to the respondent. The petitioner complained that after the marriage the respondent subjected him to extreme cruelty and cited several incidences some of which I will highlight in this judgment. The respondent constantly extorted money from the petitioner and this caused the petitioner mental anguish and improvise him to the extent that he now lives like a pauper. In this connection, the respondent secretly wrote a letter to the petitioners pensioner trying to get money from the Dutch Government and sent a copy of the marriage certificate which caused the petitioner's monthly pension to be reduced drastically. The same certificate of marriage was sent by the respondent to the respondent's children with his first wife which caused them extreme anxiety and this caused a rift between the petitioner and his children.

Secondly, the respondent and her son physically assaulted the petitioner and these incidences were reported to the local Police Station. These incidences were severally reported and no action was taken by the local police. Perhaps the most devastating incident was when the petitioner shipped personal household goods and items of memorabilia such as photographs Albums with photographs of his late wife and children and other valued items to the address and in the name of the respondent. All these items were valued at Kshs.800,000/- and others are of such sentimental value. Despite the fact that he paid for the shipment and other charges the respondent has refused to surrender the goods to him.

The other issue worthy of mention is the fact that the petitioner did not understand English or kiswahili and was communicating with the respondent through an interpreter and he was not party to the

arrangements of the wedding. He did not give the requisite notice of intended marriage and nor did he seek for special dispensation of the notice. He had even not been resident of Kenya for at least 15 days preceding the date of the marriage.

The petitioner therefore urged this court to dissolve or annul the marriage which has irretrievably broken down. The parties have been separated since February 2001 and there is no possibility of reconciliation. The petitioner is an old man who is on a resident permit in Kenya and due to his ill health he would like to return to his country. This petition was opposed by the respondent who filed an Answer and Cross-Petitioned for divorce. She also sought for an order of maintenance at the rate of Kshs.20,000/- per month as she argued she is un-employed. She denied that she was cruel to the petitioner and stated that it is the petitioner who subjected her to mental anguish by making false allegations to the police. The respondent also complained that the petitioner failed to maintain her and eventually deserted her in February 2001.

I have given careful consideration to all the matters that were raised by these parties in their testimony and the pleadings filed herein. The respondent also confirmed that she did not give the requisite notice nor did she seek for its special dispensation as provided for under the Marriage Act and especially as provided for under section 8, 9 and 11 of the marriage Act.

This marriage was obviously hurriedly conducted without due regard to the provisions of the law and should therefore be annulled for failure to comply with the mandatory Provisions of the law. I have however considered the provisions of section 13 of the matrimonial causes Act, and I am of the view that the above grounds do not constitute the grounds for granting a decree of nullity and I am therefore minded to consider the cross petitioner by the respondent and whether there are any merits in her cross petition, was the petitioner cruel to her and did he fail to provide to her maintenance? It is clear from the petitioner's evidence and the documents produced in this court that he used to regularly send money to the respondent within an interval of one week between October to December 2000 when he was away in Denmark. He also sent money to the respondent to clear the goods shipped by the petitioner and it would appear the mistrust on money handled by the respondent is what resulted into the acrimony, accusations and lead to the total breakdown of the marriage.

It is also very clear that both respondent and the petitioner each had different and unrealistic expectations from each other which were all not met. The petitioner expected to enjoy countless love and comfort from the youthful respondent who was then in her early thirties as he approached his twilight years and the respondent expected to benefit from the petitioner assumed bottomless financial resources. Both of them were mistaken and therefore I find the marriage was based on a mistake. I am satisfied that the same should be dissolved or annulled as it is irretrievably broken down. I am not satisfied that the respondent should be entitled to any maintenance, she is aged 36 years while the petitioner is 69 years old, and sickly and with no ability to earn money except for his pension. On the other had the respondent was instrumental in organizing this marriage that was hurriedly conducted with due regard to the law. She is the one who could communicate with the Registrar of marriages. Secondly the petitioner faithfully sent her money and supported her but she seemed to have had insatiable needs for money which the petitioner could not satisfy.

In conclusion, both parties have sought for divorce and whichever way one looks at it, this marriage is irretrievably broken down. This petition and cross petition cannot have been brought through collusion but for reasons that the parties are so estranged from each other and there is no possibility of reconciliation.

Accordingly I hereby pronounce the decree of divorce and dissolved the marriage that was solemnized on 8/6/2000.

The decree nisi should issue for a period of one (1) month to enable the petitioner leave the country to seek medical treatment in his country.

Each party must bear their own costs.

It is so ordered.

Judgment read and signed on 15/7/2005.

M. KOOME

JUDGE