



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

DIVORCE CAUSE NUMBER 23 OF 2013

EMK.....PETITIONER

VERSUS

JNM.....RESPONDENT

J U D G M E N T

1. EMK and JNM were married under the then **African Christian and Divorce Act Cap 151** on 31st August 2002 as per the Certificate of Marriage S/No. XXXX. The marriage was solemnized at the PCEA St. [particulars withheld] Church, Nakuru.
2. On 24th December 2013, EMK filed Petition for Divorce on several grounds; including fleeing from her home and failing to fulfil wifely duties, deserting the matrimonial home, staying for years without visiting the petitioner, traumatizing the petitioner, failing to heed advice from the church and her children, failing to love the petitioner.
3. It was the petitioner’s case that they had established their matrimonial home in Nakuru, and were blessed with three (3) children. In 2010 the respondent left the home for Nairobi, while the petitioner continued to live in the matrimonial home.
4. The only prayer by the petitioner was that he be granted divorce and the marriage between him and the respondent be dissolved.
5. The respondent upon service of the Petition did not enter appearance until 10th March 2021. She did not file any Petition.
6. The Petition was heard on 9th December 2021. The respondent was present virtually. She told the court she was not opposing the Petition.
7. The petitioner in his oral testimony testified that the two were married under Kikuyu Customary Law in 1985, August, and had a Church wedding in August 2002. They separated in 2010. Their children were all adults at the time of the hearing. He testified that having been separated for ten (10) years it was only proper that the marriage be dissolved as there was no chance of reconciliation.
8. The only issue for determination is whether the petitioner has established grounds for divorce.
9. The **Marriage Act 2014** repealed the **African Christian Marriage and Divorce Act. Section 98(1) & (2) of the Marriage Act No. 4 of 2014** states;

“(1) A subsisting marriage which under any written or customary law hitherto in force constituted a valid marriage immediately before the coming to force of this Act is valid for the purposes of this Act.

(2) Proceedings commenced under any written law shall, so far as practicable, be continued in accordance with the provisions of this Act.”

This Petition will therefore be determined under the provisions of the said Act.

10. This was a Christian marriage. The grounds for dissolution of Christian Marriage are set out at **Section 65 of the same Act;**

“ A party to a marriage celebrated under Part III may petition the court for a decree for the dissolution of the marriage on the ground of—

- (a) one or more acts of adultery committed by the other party;*
- (b) cruelty, whether mental or physical, inflicted by the other party on the petitioner or on the children, if any, of the marriage; or*
- (c) desertion by either party for at least three years immediately preceding the date of presentation of the petition;*
- (d) exceptional depravity by either party;*
- (e) the irretrievable breakdown of the marriage.”*

11. The reality of this marriage: The parties herein were married in 1985 under Kikuyu customary law. The demands of Christianity caught up after seven (7) years and they went to the church for solemnizing their marriage. Eight (8) years after the Christian marriage the respondent left. Three (3) years after the desertion the petitioner filed this Petition, ten (10) years after the separation, eight (8) years of the petition lying in court, the parties have remained apart.

12. **Section 65(6) of the Marriage Act** states that a marriage has irretrievably broken down if among other things, the spouses have been separated for at least two (2) years, whether voluntarily or by decree of the court, a spouse has deserted the other spouse for at least three (3) years immediately preceding the presentation of the Petition.

13. Clearly the facts of this case place it this marriage in both categories, an indication that there is nothing salvageable about this marriage. The marriage has so irretrievably broken down that the respondent made an appearance to simply state she was not opposing the petition.

14. This court can have nothing useful to add other than to do its duty to stamp its lawful authority on the freedom the parties have already taken for themselves.

15. The marriage between EMK and JNM be and is hereby dissolved.

16. Each party to bear its own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 4TH DAY OF FEBRUARY, 2022.

MUMBUA T MATHEKA

JUDGE

IN THE PRESENCE OF:-

KAIRU MAINA ASSOCIATES, ADVOCATES FOR THE PETITIONER

RESPONDENT IN PERSON N/A