



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

DIVORCE CAUSE NO. 154 OF 2014

CRVH.....PETITIONER

V E R S U S

KSVH.....RESPONDENT

JUDGMENT

(1) Before Court is the Petition dated 7th July 2014 filed by **CROSS VH** (the '**Petitioner**') seeking the following orders:-

“(a) The marriage between The petitioner and the Respondent be dissolved.

(b) That the Respondent be condemned to bear the costs of this cause.

(c) Any further or other relief that this Honourable Court may deem just and fit to grant to the Petitioner in the circumstances.”

(2) The Respondent **KSVH** did not enter appearance in the matter nor did she file any Reply to the Petition for Divorce. The matter therefore proceeded as an undefended cause.

(3) The Petitioner testified before the Court on 5th March 2013. He told the Court that he and the Respondent got married in **Banjul** in the **Republic of Gambia** on 1st March 2014 under the **Civil Marriage Act 1938** of the **Laws of Gambia**. Annexed to the Petition is a certified copy of the Marriage Certificate Serial No. [xxxx] (Annexure **CR '1'**). This is evidence of the existence of a marriage between the Petitioner and the Respondent.

(4) The Petitioner told the Court that their marriage was blessed with two (2) children who are now aged **16 years** and **12 years**. That pursuant to a consent entered into between the couple the issues of custody and maintenance of the two (2) children have been agreed upon.

(5) The Petitioner stated that due to disagreements the couple separated in the year **2014**. The Petitioner now seeks the dissolution of the marriage pleading that he wishes to move on with his life.

(6) **Section 66(1)** of the **Marriage Act No. 4 of 2014** provides that:-

“A party to a marriage celebrated under Part IV may not petition the Court for the separation of the parties or the dissolution of the marriage unless three (3) years have elapsed since the celebration of the marriage.”

(7) The marriage in question as celebrated in the year **2004** and this Petition was filed **ten (10) years** later in the year **2014**. Thus **Section 66(1)** has been complied with.

(8) **Section 66(2)** of the same Act provides that:-

“A party to a marriage celebrated under Part II may petition the Court for the separation of the parties or the dissolution of the marriage on the following grounds:-

(a) adultery by the other spouse.

(b) cruelty by the other spouse.

(c) exceptional depravity by the other spouse.

(d) desertion by the other spouse for at least three (3) years; or

(e) the irretrievable breakdown of the marriage.”

(9) The Petitioner herein has alleged cruelty both physical and emotional by the Respondent. The particulars of the cruelty have been set out in **paragraph 7** of the Petition. The Petitioner claims that aside from physically attacking him the Respondent was also verbally abusive towards him in the presence of family, friends and in the presence of their two (2) children. The Petitioner’s evidence in this regard remains unchallenged and uncontroverted since the Respondent opted not to participate in and / or defend this divorce petition.

(10) The Petitioner has also stated that the marriage has broken down irretrievably. **Section 66(6)** of the **Marriage Act** provides as follows:-

“A marriage has irretrievably broken down if

(a) a spouse commits adultery;

(b) a spouse is cruel to the other spouse or to any child of the marriage;

(c) a spouse willfully neglects the other spouse for at least two years immediately preceding the date of presentation of the petition;

(d) the spouses have been separated for at least two years, whether voluntary or by decree of the court, where it has;

(e) a spouse has deserted the other spouse or at least three years immediately preceding the date of presentation of the petition;

(f) a spouse has been sentenced to a term of imprisonment for life or for a term of seven years or more;

(g) a spouse suffers from incurable insanity, where two doctors, at least one of whom is qualified or experienced in psychiatry, have certified that the insanity is incurable or that recovery is improbable during the life time of the respondent in the light of existing medical knowledge; or

(h) any other ground as the court may deem appropriate.” [emphasis mine]

(11) In his Petition the Petitioner has alleged cruelty towards him by the Respondent. Secondly the parties have now been separated for roughly **six (6) years**. It is clear that this is a marriage that has irretrievably broken down.

(12) I note from the record that this matter was referred for Court Annexed Mediation. However the Respondent failed and/or declined to attend the mediation and a Certificate of non-compliance was filed in Court by the Mediator on **10th September 2019**. This is further proof that there is no meeting of minds between the parties.

(13) Finally I find that this Petition has merit and I allow the same. The marriage between the Plaintiff and the Respondent is hereby dissolved. Decree Nisi to issue the same to be made absolute within thirty (30) days hereof. Since this is a family matter I will make no orders on costs.

DATED IN NAIROBI THIS 12TH DAY OF MARCH, 2021.

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MAUREEN A. ODERO

JUDGE