



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

FAMILY DIVISION

DIVORCE CAUSE NO. 58 OF 2015

ENC.....PETITIONER

VERSUS

SNK.....RESPONDENT

JUDGMENT

1. By a Petition dated 6.10.15, ENC, the Petitioner seeks the dissolution of her marriage to the Respondent SNK. The marriage between the parties was solemnized on 18.4.09 at [Particulars withheld] Church, Mombasa. The parties were blessed with 1 child FK born on 13.4.10. The grounds for divorce as stated in the Petition are cruelty and desertion.

2. The Petitioner accused the Respondent of neglecting her and their child, denial of conjugal rights, adultery, constructive desertion, coming home drunk at late hours, being abusive and disorderly and of bad temper and lack of common intention to sustain the marriage leading to separation for 2 years prior to the filing of the Petition. She averred that the acts of cruelty and desertion have caused her embarrassment, mental torture and anguish. She no longer has any love for the Respondent and cannot remain married to him. The marriage has therefore irretrievably broken down. The Petitioner also prayed for custody of the child of the marriage as well as an order that the Respondent pay maintenance for the child.

3. The Respondent in his response dated 23.11.16 denies all allegations of cruelty and desertion. He contends that he showed a lot of love and compassion to Petitioner and their child. In spite of limited means, he always provided for them. He accused the Petitioner of desertion and cruelty. He further accused her of calling him a failure in life and also denied him conjugal rights. She ensured that there was no peace in the marriage by being rude to him and their neighbours thereby causing him anxiety and stress. She deserted the matrimonial home and all efforts to reach her were fruitless as she cut off communication with the Respondent. He even involved the Church but the Petitioner was categorical that she was not interested in the marriage. To him, the marriage has irretrievably broken down. He prayed for dissolution of the marriage and access to the child of the marriage.

4. Although the Petitioner was duly served with the hearing notice, neither she nor her counsel made an appearance on the hearing date.

5. In his brief testimony, the Respondent stated that following the solemnization of his marriage to the Petitioner, they cohabited in Mishomoroni until 2012 when they moved to Mtopanga. The Respondent is a driver and delivers motor vehicles to customers upon purchase. Sometime in September 2012, he delivered a motor vehicle to a customer in Nairobi. Upon his return, he found that the Petitioner had deserted the matrimonial home and had taken their child with her. He prayed for dissolution of the marriage. He also prayed that he be allowed to see his child whom he has not seen since.

6. The grounds upon which a Christian marriage may be dissolved are stipulated in the Marriage Act, 2014 at Section 65. These include:

(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;

(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”

7. The marriage herein is a Christian marriage having been solemnized at [Particulars withheld] Church, Mombasa. The Petitioner failed to

attend Court on the hearing date. The Respondent's testimony therefore remains uncontroverted. Having considered the Petition the response thereto and the testimony of the Respondent, it is apparent that the marriage herein ended upon the desertion by the Petitioner. Since 2012, the parties have not resumed cohabitation. This is a marriage that appears to be on paper only, the same having irretrievably broken down on account of the Petitioner's desertion. The desertion has no doubt occasioned mental and emotional anguish and pain upon the Respondent. I am therefore satisfied that the grounds for dissolution of the marriage have been established.

8. Accordingly, I pronounce a decree of divorce and order that the marriage solemnised at [Particulars withheld] Church, Mombasa on 18.4.09 be and is hereby dissolved. Decree *nisi* to issue and the same to be made absolute within 1 month. That matter concerning access to the child of the marriage may be pursued at the Children's Court which has jurisdiction in the first instance. Each party shall bear own costs.

DATED, SIGNED and DELIVERED in MOMBASA this 1st February 2019

M. THANDE

JUDGE

In the presence of: -

..... **for the Petitioner**

..... **for the Respondent**

.....**Court Assistant**