



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MALINDI

DIVORCE CAUSE NO. 2 OF 2018

PB.....PETITIONER

VERSUS

EAM.....RESPONDENT

JUDGEMENT

1. The Petitioner, PB and the Respondent, EAM were married at Langata in Nairobi on 3rd September, 1983. They thereafter cohabited as man and wife in Botswana, Uganda and Kenya.
2. The Petitioner now seeks to divorce the Respondent on the ground that their marriage has irretrievably broken down and the same should be dissolved.
3. The Respondent did not file an answer to the petition. The Petitioner testified as PW1 and adopted his written statement. In the statement filed on 5th March, 2018, the Petitioner stated that he had been married to the Respondent for over 35 years. In the year 2012 the Respondent developed apathy towards him, became unhappy, kept quiet and was angry most of the times.
4. The Petitioner's case is that on 12th August, 2015 they filed a separation agreement. Thereafter the Respondent left him at Kilifi and went to live at Nanyuki. It is the Petitioner's case that their marriage is unworkable and he therefore seeks a dissolution of the same as it has irretrievably broken down. When he testified in court the Petitioner indicated that he was not seeking costs.
5. A perusal of the pleadings discloses that the marriage between the Petitioner and the Respondent is a civil marriage. Under Section 66(2) of the Marriage Act, 2014 one of the grounds for the dissolution of a civil marriage is where it has irretrievably broken down.
6. As per Section 66 (6) of the Marriage Act, 2014. 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 of the 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.”

7. The Petitioner and the Respondent have lived separately from 2015. They had therefore lived separately for over two years by the time the petition was filed. As per Section 66(6)(d) of the Marriage Act, 2014, the marriage between the Petitioner and the Respondent has irretrievably broken down.

8. The Petitioner has therefore met one of the conditions for the dissolution of a marriage. His petition succeeds and is allowed as prayed. There is no order as to costs.

Dated and Signed at Nairobi this 24nd day of April, 2019

W. Korir,

Judge of the High Court

Dated, Countersigned and Delivered at Malindi this 8th day of July, 2019

R. Nyakundi,

Judge of the High Court