



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

FAMILY DIVISION

DIVORCE CAUSE NO. 33 OF 2011

RN.....PETITIONER

VERSUS

PKK.....RESPONDENT

JUDGMENT

1. The Petitioner RN, and the Respondent PKK began cohabiting in 1986. Subsequently, their union was solemnized at the Holy Ghost Cathedral, Mombasa. The marriage was blessed with 4 children who are all adults. The parties lived together as husband and wife until 2006 when they went their separate ways. The Petitioner lives in Dubai while the Respondent lives in Nairobi.

2. The Petitioner filed this Petition dated 17.8.11 seeking dissolution of the marriage on grounds that the Respondent committed adultery and also subjected her to cruelty. She alleged that during the marriage, the Respondent treated her with contempt and subjected her to abuse occasioning her depression and emotional turmoil. Sometime in 2005, the Respondent drove to her work place at the airport in Mombasa and began to assault her. He threw her into his car and continued slapping her, calling her a prostitute. This happened, she alleged, all because she sent a text message to one Mr. Kamlesh asking him for a quotation for the supply of cashew nuts. In another incident in 2006 after she received a phone call from her gym instructor, the Respondent slammed the Petitioner's phone and threatened to kill her. The following day the Respondent continued with the threats and again accused the Petitioner of being a prostitute while raining kicks on her.

3. The Petitioner further accused the Respondent of committing adultery and alleged that he is living with his lover thus occasioning the Petitioner mental anguish. As a result of the Respondent's conduct, the marriage has irretrievably broken down. The Petitioner prayed that the marriage be dissolved.

4. The Respondent though served with the Petition and Notice to Appear failed to file appearance. The Registrar's certificate was issued on 23.11.16 thus paving way for the matter to proceed to hearing as an undefended cause.

5. In her testimony, the Petitioner reiterated the averments in her Petition. In particular, she stated that their problems began around 1998 to 2000. The Respondent constantly accused her of being a prostitute and assaulted and strangled her several times. She eventually left the matrimonial home for Nairobi in 2006 but the threats continued on telephone. In 2007 after a robbery incident in her home in Nairobi, the Petitioner left the country for Dubai. She prayed that the marriage be dissolved.

6. Cruelty and adultery are some of the grounds upon which a Christian marriage may be dissolved. Section 65 of the Marriage Act, 2014 provides:

(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 Petitioner in her uncontroverted testimony stated that the Respondent subjected her to both physical and mental cruelty. As a direct result of the cruelty the Petitioner left the matrimonial home in 2006. In absence of evidence to the contrary, and given that I have no reason to doubt the Petitioner's testimony, I am satisfied that the ground of cruelty has been established. Since the parties separated in 2006, the

parties have not resumed cohabitation. The marriage has no doubt irretrievably broken down.

8. In the result I do pronounce a decree of divorce and order that the marriage between the Petitioner and the Respondent **solemnized** on 1.6.91 at the Holy Ghost Cathedral, Mombasa be and is hereby dissolved. Decree *nisi* to issue and the same to be made absolute within 1 month. There shall be no order as to costs.

DATED, SIGNED and DELIVERED in MOMBASA this 12th day of July 2019

M. THANDE

JUDGE

In the presence of: -

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

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

..... **Court Assistant**