



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 99 OF 2005

IWG.....PETITIONER

VERSUS

GMG.....RESPONDENT

JUDGMENT

1. The Petitioner and the Respondent then a spinster and a bachelor respectively solemnized their marriage on 2nd February, 1991 at P.C.E.A Church Nairobi under the Christian Marriage and Divorce Act (Cap 151) of the Laws of Kenya. A Certificate of marriage serial number [xxxx] was issued to them. The couple cohabited at [Particulars withheld] off Kiambu road. The union was blessed with three issues namely; MSM, HW and IN.

2. The Amended Petition filed on 15th April, 2009 is premised on the ground of cruelty against the Petitioner by the Respondent as particularised thereto. The Petitioner states that since the celebration of their marriage, the Respondent has been guilty of desertion and acts of cruelty against her.

3. The Petitioner complained that the Respondent has subjected her to physical cruelty, assault causing bodily harm, embarrassment and continuous psychological stress and trauma. She accused the Respondent of chasing her out of their matrimonial home where he started cohabiting with other women. She also accused him of being a drunkard and of defamation of character. She stated that the Respondent exposed the Petitioner to mental anguish due to his conduct.

4. The Petitioner urged that due to the aforesaid acts of desertion and cruelty the Petitioner strongly feels that they cannot continue to hold out as husband and wife with the Respondent. She therefore asked the court to dissolve the marriage between her and the Respondent as the marriage had irretrievably broken down. She confirmed that this Amended Petition had not been presented or prosecuted in collusion with the Respondent, nor had she connived or condoned the acts of cruelty and infidelity complained of.

5. Upon being served with the Amended Petition, the Respondent filed his Answer to Amended Petition and a Cross-petition. He denied all grounds advanced by the Petitioner. He accused the Petitioner of deserting the matrimonial home and of cruelty against him leading to the irretrievable breakdown of the marriage. In the Cross-petition, he too prayed that the marriage between the Petitioner and himself be dissolved.

6. On 16th April, 2012 the Deputy Registrar certified that the matter was suitable to proceed for hearing as a defended cause for one day in Nairobi before a single Judge. On 26th September, 2019 the matter came for hearing but there was no appearance from the Respondent despite service being effected.

7. In his testimony, the Petitioner stated that the couple had been living separately since January 2009 and that there was no possibility of reconciliation. She urged the court to dissolve the marriage between herself and the Respondent as the marriage had irretrievably broken down.

8. I have perused the grounds of the Amended Petition, the Answer thereto and the grounds of the Cross-Petition. I have also considered the oral evidence of the Petitioner as tendered in Court. What is not in dispute is that the parties have lived apart for the last ten (10) years. It is also clear that there have been irreconcilable differences between them and both parties want the marriage celebrated between them to be dissolved.

9. They confirm that this Amended Petition has not been presented or prosecuted in collusion, neither have they connived or condoned the matrimonial offences which each has complained of. They both certify that there have been no previous proceeding filed regarding the marriage.

10. From the foregoing, I make the finding that due to the matrimonial offences set out above and which have been proved on either side on a

balance of probabilities the marriage between the two parties remains in existence in paper only. The marriage celebrated between the parties herein on 2nd February, 1991 has broken down irretrievably and cannot be salvaged.

In the premise, I make the following orders:

- i. That the marriage celebrated between the Petitioner and the Respondent on 2nd February, 1991 at P.C.E.A Church Nairobi is hereby dissolved.
- ii. That a Decree Nisi dissolving the said marriage is hereby issued to be made absolute thirty (30) days from the date of this Judgment.
- iii. There shall be no orders as to costs.

SIGNED DATED AND DELIVERED IN OPEN COURT THIS 17TH DAY OF OCTOBER, 2019.

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L. A. ACHODE

HIGH COURT JUDGE

In the presence ofAdvocate for the Petitioner

In the presence of Advocate for the Respondent