



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 13 OF 2017

JNS.....PETITIONER

VERSUS

PJS.....RESPONDENT

JUDGMENT

1. The Petitioner and the Respondent then a spinster and a bachelor solemnized their marriage on 26th April, 2004 in [Particulars Withheld], Hawaii in the United States of America. A certificate of marriage of license number ***** was issued to them. The couple cohabited in Karen, Nairobi and [Particulars Withheld] in Laikipia. The marriage was not blessed with any issues.

2. The Petition dated 10th July, 2017 is premised on the ground that the Respondent deserted the Petitioner and their matrimonial home in June 2015 and has not returned since. The particulars of desertion were that the Respondent refused to let the Petitioner know his whereabouts or maintain the Petitioner.

3. The Petitioner averred that as a consequence of the Respondent's desertion, she has been denied her conjugal rights. Further, the Respondent has alienated her from the running of the family business which they jointly own. The Petitioner urged that the marriage had irretrievably broken down and asked the Court to dissolve union between her and the Respondent. The Petitioner confirmed that this Petition had not been presented or prosecuted in collusion with the Respondent, nor had she connived or condoned the acts of desertion complained of.

4. Upon being served with the Petition, the Respondent filed an Answer to the Petition and a Cross-Petition. He admitted that the parties had been living separately since June, 2015 but denied the particulars of desertion as stated by the Petition. He stated that cohabitation had not resumed since then as efforts to salvage the marriage had been unsuccessful. He averred that the marriage had irretrievably broken down and urged the Court to dissolve the marriage. He affirmed that the Cross-Petition had not been presented in connivance with the Petitioner.

5. On 14th February, 2019 the Deputy Registrar certified that the matter was suitable to proceed for hearing before the Judge.

6. At the hearing, the Petitioner withdrew her Petition and the Respondent proceeded with his Cross-Petition undefended. He stated that he has not been cohabiting with the Petitioner since June, 2015 and that the marriage had irretrievably broken down. Further, that efforts to reconcile had been unsuccessful. He urged the court to dissolve the marriage between himself and the Petitioner.

7. I have perused the evidence of the Respondent to establish whether the ground set out in the cross petition for the dissolution of the marriage is proved. The grounds upon which a civil marriage maybe dissolved are provided under section 66(2) of the Marriage Act No. 4 of 2014 as:

“(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 atleast three years; or

(e) the irretrievable breakdown of the marriage”

8. It is not denied that the parties have not cohabited since June, 2015 to date which is period of over four (4) years. Efforts of reconciliation have come to naught. It is therefore evident that the marriage celebrated between the parties herein on 26th April, 2004 cannot work and has

irretrievably broken down with no hope of being salvaged, in the premise, I find that the cross petition has merit and I allow it with orders as follows:

i. That the marriage celebrated between the Petitioner and the Respondent in [Particulars Withheld], Hawaii in the United States of America on 26th April, 2004 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