



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 199 OF 2014

M M A O.....PETITIONER

VERSUS

S O O.....RESPONDENT

JUDGMENT

1. The Petitioner then a spinster and the Respondent then a bachelor married on 23rd December, 2009 at the Registrar's Office in Nairobi. A certificate of marriage serial Number [...] was issued to them in accordance with the Marriage Act (Cap 150 Laws of Kenya). The couple thereafter cohabited in Nairobi, Umoja Estate. Their marriage was blessed with one issue, B J O.

2. The Petition dated 7th October, 2014 is premised on grounds of desertion and cruelty against the Petitioner by the Respondent as particularised in the Petition. The Petitioner states that since the celebration of their marriage, the Respondent has been guilty of desertion and acts of cruelty against her. The Petitioner complained that sometime in the month of August 2010, the Respondent left the matrimonial home he shared with the Petitioner without any justifiable cause, bringing the cohabitation between himself and the Petitioner to an end.

3. On the particulars of cruelty, the Petitioner averred that the Respondent refused to provide for the Petitioner, deserted the matrimonial home and spent his days and nights outside the matrimonial home. She averred that the Respondent had constructively abandoned the matrimonial home. Efforts by the Petitioner for the resumption of cohabitation and for reconciliation have been futile.

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, has therefore, asked the court to dissolve the marriage 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 cruelty, and desertion complained of.

5. On 3rd February, 2016 this Court granted the Petitioner leave to serve the Respondent by way of substituted service. The Respondent was consequently served with the petition, notice to appear through advertisement in the standard newspaper on 17th October, 2016. The Respondent did not file an answer to the Petition nor appear in Court.

6. On 13th June, 2019 the Deputy Registrar certified that the matter was suitable to proceed for hearing as an undefended cause for one day before a single judge.

7. At the hearing of the Petition on 26th September, 2019 the Petitioner stated that attempts to reconcile with the Respondent have failed, and that there was no possibility of reconciliation even if the Respondent were to reappear. She further stated that he abandoned their matrimonial home for unknown reasons leaving behind their minor child whom he has since failed to provide for. She urged the Court to dissolve the marriage on the grounds of desertion by the Respondent for nine (9) years.

8. 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''

9. It is not denied that the parties have not cohabited since the year 2010 todate. From the foregoing the Petitioner has proved the matrimonial offence of desertion as found in **Section 66(2) (d) and (e)** on a balance of probabilities. It is evident therefore that the marriage celebrated between the parties herein on 23rd December, 2009 cannot work and has irretrievably broken down with no hope of being salvaged. In the premise I find that the Petition has merit and I allow it with orders as follows:

- i. That the marriage celebrated between the Petitioner and the Respondent at the Registrar's office in Nairobi on 23rd December, 2009 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 ofAdvocate for the Respondent