



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

DIVORCE CAUSE NO. 2 OF 2016

BETWEEN

MSA.....PETITIONER

AND

KMKA.....RESPONDENT

JUDGMENT

1. The Petitioner **MSA** filed a petition against the Cross Petitioner **KMKA** on the 6th of December, 2016 seeking dissolution of marriage between the two. The cross Petitioner filed her answer and cross petition on 8th July, 2019.

2. The two got married on the 4th of December, 1994 in accordance with Hindu rites in Tal-Pelad India. The two then moved to live as husband and wife in Kenya.

3. The parties resided at the Petitioner's parent's home at Plot No.[Particulars Withheld] Gigiri, off Un Avenue Nairobi between 1994 and 2016 except for a period of 4 years when the petitioner disagreed with his parents and they moved out.

4. The union between the two begot two sons:

(a) DMA born on 25th July, 1997 and

(b) RMA born on 25th February, 2000.

5. The Petitioner's main grounds for divorce are cruelty and irreconcilable differences which he states led to the marriage breaking down irretrievably.

6. Particulars of cruelty cited include:

(a) The Cross Petitioner's changed attitude since 2013 which caused the Petitioner unbearable mental anguish.

(b) Lack of cordial conversation.

(c) The Petitioner having different life style from that of the Petitioner.

(d) Denying the Petitioner marital consortium and conjugal rights.

(e) Failure to give the Petitioner care and attention.

7. The Respondent/Cross Petitioner denied all the allegations of cruelty attributed to her by the Petitioner. In her cross petition she also cited instances of cruelty by the Petitioner and his family, which include:

(a) The Petitioner being unbearably cruel in his language and conduct.

(b) Being a control freak.

(c) Being violent, made fearful threats causing the Cross Petitioner psychological stress and trauma.

(d) Enslaving the Petitioner for 22 years.

8. The petitioner mainly sought for dissolution of the marriage between the two whereas the Cross petitioner/ Respondent sought for dissolution of the marriage and reasonable alimony, medical insurance, life policy and school fees to study Art and design, in the alternative a lump sum payment of Kshs100,000,000, return of all her personal properties and costs.

9. At the hearing of the petition each of the parties gave evidence mainly dwelling on the particulars of cruelty. The Petitioner alleged adultery on the part of the cross petitioner/respondent. However, the assertion of adultery was neither supported by pleadings nor evidence and the same must fail.

10. From the pleadings and evidence on record it is clear that no love is lost between the two, from the way the two treated each other, leading to the Cross Petitioner acrimoniously leaving the matrimonial home with the help of her father to start a life in India where she has since stayed and the parties have lived a part for close to three years now. I have therefore formed the opinion that there is adequate proof that the two can no longer hold as husband and wife and I find as a matter of fact that the marriage between the two has irretrievably broken down.

11. No much evidence was adduced regarding the cross petitioner's things. In that regard the claim fails.

12. Most contentious of the issues in this divorce is the quest by the Cross-Petitioner/Respondent to have alimony and other monetary benefits from the Petitioner as addressed hereinabove.

13. To address the issue raised I have considered the lives of the two while they lived and cohabited as husband and wife for 22 years. The Petitioner works in a telecommunication business, where he was and still is a director. It is a family business known as 'Technical Engineering Services Limited'. He continues to reside in up market Gigiri in Nairobi with his aged parents and he currently educates his children in the United States of America.

14. In his affidavit of means the Petitioner claims to earn about 51,000/- a month and states that his parents educate his sons for him and house him.

15. On the other hand the Cross Petitioner/Respondent holds a diploma in home science, was a house wife for 22 years while she stayed in Kenya and for the past 3 years has been unable to get any employment in India. She claims that her Kenyan husband failed to obtain a work permit for her while she was in Kenya and she therefore has no work experience but is willing to sharpen her skills by going back to school. She is now 48 years.

16. The Petitioner on his part claimed that while in Kenya the Respondent failed and/or refused to take up employment but lived a lavish life that he was forced to finance.

17. The Respondent denied refusing to work or living a lavish life. Further she informed the court that she never had a work permit and for 22 years she was a house wife taking care of the Petitioner, their children and her parents in-law.

18. Further the cross petitioner informed the court that the Petitioner ran an account from which he would pay school fees. He equally had a credit card. She further informed the court that currently her father and brother take care of her needs.

19. Section 77 of the Marriage Act No. 4 of 2014 provides:

“(1) The court may order a person to pay maintenance to a spouse or former spouse-

- a. If the person has refused or neglected to provide for the spouse or former as required by this act;**
- b. If the person has deserted the other spouse or former spouse, for a long as the desertion continues;**
- c. During the course of proceedings;**
- d. When granting or after granting a decree of separation or divorce; in**
- e. If after making a decree of presumption of death, the spouse or former spouse is found alive.”**

20. From the evidence of both parties, for 22 years, though the cross petitioner had a diploma in home science, she was not in gainful employment. She was not Kenyan and needed the support of her husband to apply either for citizenship or a work permit none of which happened.

21. 22 years is a life time, the cross petitioner spent her youthful life bearing children for the Petitioner, bringing them up, taking care of the Petitioner and his aged parents; she was a typical house wife, who toiled for her family; in the meantime the Petitioner a man of the same

age with the Cross Petitioner advanced his career, he is a director of a telecommunication Company and their two sons are in school in the United States of America. He live in an upmarket area of Nairobi.

22. The Petitioner’s father is aged 76, I am not at all convinced that the 76-year-old father is the one financing the Petitioner’s lavish life style and catering for the high fees necessary for an American Education. I will not hasten to state that I do not find the payslips produced in court to reflect the true earnings of the petitioner. The same do not bear a company seal, are not on a letter head, neither are they signed by an officer of the company, the only signature appearing is that of the Petitioner.

23. As I ponder over this matter , I am persuaded by the decision of this court in **V.J.S Vs N.V.J.S. (2013) eKLR** where the judge held;

“The Cross Petitioner gave to the Petitioner and his family the best years of her life. She must receive an alimony sufficient to enable her to rebuild her life, purchase a home for herself and enable her to re-train so as to continue with her nursing profession (or any other profession she desires)..... Clearly the Petitioner is not a man of straw. He is more than comfortable financially and is well able to afford to pay a generous sum as alimony to his wife certainly much more than the Kshs.5.75 million offered in the first deed of settlement. The Cross Petitioner on the other hand is basically destitute, she owns no property, has no job and virtually earns no income therefore in view of the means clearly available to the Petitioner including his family business which I have no doubt runs at profit I am of the opinion that a total lump sum of Kshs.10 million would suffice as a reasonable and just alimony payment to the Cross Petitioner.”

24. I have quoted the above authority at length as I find the same to be very similar to this case. I find that the Petitioner failed to honestly disclose his true income, however, his life style gives him away.

Secondly, I find that the Cross Petitioner gave her best years to her husband, their family and that of her husband. She remains jobless, and is destitute. The Petitioner works and is a director of a family company, despite this, he has failed to make any offers of alimony and has neglected his wife for several years while she stayed in India out of desperation.

25. The Cross Petitioner deserves a better life. I find her claim for alimony to be reasonable, as this will enable her live a life she was accustomed to, compensate for the time spent on the family as her husband built up a career and devoted his time in the family business.

26. In arriving at a reasonable sum for alimony that will to enable the Cross Petitioner rebuild her life, go to school and live a life that she so well deserves, I will consider the authority quoted above and factor in inflation since the said decision was arrived at 6 years ago.

27. Based on the above I direct and order that;

- a. The marriage between **MSA and KMKA** be and is hereby dissolved.
- b. Decree Nisi do issue forthwith and made absolute within 3 months of this date.
- c. The Petitioner shall pay the Respondent/Cross Petitioner an alimony of Kshs.12,000,000/= (Twelve million) within the next 90 days of today’s date.
- d. Costs of the suit be and are hereby awarded to the Cross Petitioner in any event.

DATED, SIGNED AND DELIVERED at NAIROBI THIS 17TH DAY OF OCTOBER ,2019.

ALI-ARONI

JUDGE

In the presence of:

Petitioner

Respondent.....