



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

DIVORCE CAUSE NO. 17 OF 2015

BETWEEN

S R S V.....PETITIONER

AND

P H.....RESPONDENT

JUDGMENT

1. By a petition dated 19th February 2015 the Petitioner S R S V moved this court for a divorce against her husband the Respondent P H.
2. According to the petition the parties cohabited as husband and wife from 1998 to 2011 and on the 2nd of January 2012 they formalised their union in Bandra court Mumbai under Section 13 of the Special Marriage Act of India.
3. Between 1998 and January 2015 the two resided in various places in Nairobi, namely Kilimani, Kileleshwa, Ngong road and No. 2, Grevilla Park, 32 Brookside.
4. In the Petition, various instances were narrated in support of the ground of cruelty. It was stated that the Respondent failed to maintain the Petitioner; was alcoholic and flirted with various women; physically and verbally abused the Petitioner, and in some instances caused her injury; he failed to take care of the Petitioner's medical needs; failed to give the Petitioner access to a vehicle or even the matrimonial bedroom and as a result of the alleged cruelty the Petitioner sought to have the marriage dissolved, maintenance in arrears amounting to Kshs.19,440,000/= , maintenance of Kshs.540,000/= a month, alimony and costs.
5. On the 13th of November, 2017 the Respondent filed an answer to the Petition and across petition. On his part he denied each and every allegation of cruelty and admitted that the marriage had irretrievably broken down but attributed the same to the fact that they no longer enjoyed each other's company; the Petitioner moved from the matrimonial bedroom to the guest bedroom; their differences were irreconcilable; the Petitioner refused to work and relied on the Respondent to provide for her; there was no trust between them; and the Petitioner had resentment towards the Respondent/cross Petitioner. The Respondent/cross Petitioner sought for dismissal of the petition and dissolution of the marriage based on the cross petition.
6. The Petitioner and her counsel were both absent at the time of hearing the petition despite service of a hearing notice and the matter therefore proceeded undefended. The court was informed that the parties had entered into a settlement on alimony which may inform lack of interest on the part of the Petitioner.
7. At the hearing the Respondent/cross Petitioner gave evidence related to their life between 2010 and 2012. It was his testimony that he got the Petitioner a work permit but the Petitioner refused to work, and left the Respondent/cross Petitioner to provide for all their needs. That in September, 2012, the Petitioner moved to the guestroom denying the Respondent/cross Petitioner conjugal rights and in 2015 she moved the court for a divorce and sought for maintenance. He further testified that all his efforts to reconcile with the Petitioner failed as she was not interested in reconciliation but just to be maintained. Further the Petitioner refused to mix with Respondent's/cross Petitioner's family and community members.
8. The Respondent/cross Petitioner further testified that on the 5th of April, 2017 a payment/settlement was made to the Petitioner whom he has not seen since then; the Petitioner's phone number has since been changed; and her whereabouts unknown. He sought for dismissal of the Petition.
9. I have considered the petition, the cross petition, documents on record and the testimony of the Respondent/cross Petitioner. The issue for determination in the absence of any evidence from the Petitioner is whether to dismiss the petition and to dissolve the marriage between the

parties based on the cross petition and evidence on record.

10. Clearly the parties have irreconcilable differences that were not resolved leading to deterioration of their relationship and as a result their marriage has irretrievably broken down. As at the date of hearing the parties had separated and had stayed apart from each other for a couple of years. There is also evidence that a settlement was arrived at and since then the Petitioner's whereabouts are not known.

11. Based on the above facts, it is my considered opinion no union exists in force as the parties are no longer together, consequently therefore based on the grounds in the cross petition and as testified by the Cross Petitioner the court proceeds to dismiss the petition and orders for dissolution of the marriage based on the grounds in the cross petition.

12. There is no order as to costs. Decree absolute to issue within 3 months.

DATED, SIGNED and DELIVERED at NAIROBI this 12th DAY OF JULY 2018.

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ALI-ARONI

JUDGE

In the presence of:

Petitioner.....

Respondent.....