



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA

FAMILY DIVISION

DIVORCE CAUSE NO. 27 OF 2016

K K K.....PETITIONER

VERSUS

G K YRESPONDENT

JUDGMENT

1. K K K the Petitioner herein married G K Y the Respondent herein on 29.8.08 at the **Registrar's Office in Mombasa**. The couple was issued with marriage certificate serial number [particulars withheld] which was produced in Court as proof of the fact of the marriage. **The Petitioner is an officer at [particulars withheld] while the Respondent is a prison warden. Following the marriage, the couple cohabited in Kwale. The marriage is not blessed with any children.**

2. The Petitioner has filed the Petition herein dated 30.6.16, seeking the dissolution of her marriage to the Respondent. The ground upon which the Petitioner seeks divorce is cruelty. She accuses the Respondent of being violent towards her severally and also threatening to shoot and kill her. Fearing for her life, the Petitioner left the matrimonial home in April 2013. She claims that all efforts at reconciliation have failed. The conduct of the Respondent has caused the Petitioner extreme embarrassment and agony and she prayed for the dissolution of the marriage.

3. Although the Respondent was served with the Petition and Notice to Appear, he failed to file appearance. The matter therefore proceeded as an undefended cause.

4. At the hearing, the Petitioner restated what is contained in her Petition. She averred that upon marriage she and the Respondent stayed in Kwale where the Respondent was a prison officer. The Petitioner was based in Mtongwe. The Respondent became violent in 2012 and whenever the Petitioner visited him, he would beat her up and threatened to shoot and kill her. She testified that one day in April 2013 when the Respondent was extremely violent towards her and wanted to kill her. She screamed and his colleagues came to assist. After that incident, the Petitioner returned to Mtongwe and has not returned to the matrimonial home since. In August 2013, the couple spoke on phone in an attempt to reconcile but when the Petitioner asked the Respondent if he was willing to change, he responded by shouting at her. At that point the Petitioner realised the Respondent had not changed. According to her there is no hope for the marriage and she prayed for dissolution of the same.

5. I have considered the Petition and the uncontroverted testimony of the Petitioner and it is evident that the marriage herein has irretrievably broken down. The marriage herein was conducted at the Registrar's office in Mombasa. It is therefore a civil marriage. The Marriage Act, 2014 at Section 66(2) provides for the grounds upon which a civil marriage may be dissolved. These include:

- (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 at least three years; or**
- (e) the irretrievable breakdown of the marriage”**

6. The Petitioner seeks dissolution of the marriage on the ground of cruelty. She claims the Respondent treated her with cruelty by being violent towards her and threatening to shoot and kill her. As a result of the Respondent’s conduct the Petitioner has suffered extreme trauma and mental anguish. I am satisfied that the ground of cruelty has been proved.

7. From the testimony of the Petitioner, it would appear that there is no hope for the marriage herein which has irretrievably broken down. The parties separated in April 2013 and have not resumed cohabitation.

8. In view of the foregoing, I pronounce a decree of divorce and order that the marriage between the Petitioner and the Respondent **solemnized at the Registrar’s Office in Mombasa on 29.8.08** be and is hereby dissolved. Decree *nisi* to issue and the same to be made absolute within 1 month.

DATED, SIGNED and DELIVERED in MOMBASA this 24th day of January 2017

M. THANDE

JUDGE

In the presence of: -

..... **for the Petitioner**

..... **for the Respondent**

..... **Court Assistant**