



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA
FAMILY DIVISION
DIVORCE CAUSE NO. 69 OF 2015

B MPETITIONER

VERSUS

G A ORESPONDENT

JUDGMENT

1. The Petitioner B M has filed the Petition herein dated 3.12.15 seeking dissolution of her marriage to G A O the Respondent herein. The grounds upon which the Petitioner seeks divorce are cruelty and adultery. She prays for dissolution of the marriage, custody of the child of the marriage and an order that both parties share parental responsibility equally and of course costs.

2. The Respondent despite being served with the Petition and Notice to Appear he failed to file appearance. The matter therefore proceeded as an undefended cause.

3. The brief facts are that the Petitioner then a spinster and the Respondent then a bachelor, got married on 26.9.10 at the [Particulars withheld] Church, Mombasa. **Marriage certificate number [Particulars withheld] is proof of the fact of marriage. The couple cohabited in Magongo, Mainland, Mombasa and was blessed with 1 child, V A born on 17.7.11. At the time of the marriage, the Petitioner had 2 other children of her own.**

4. In her evidence in support of the Petition, the Petitioner stated that following their marriage, the parties lived in Magongo, Mainland, Mombasa. In December 2012, the Petitioner and the children went to Tanzania for a visit at her mother's home. Her mother is from Tanzania. Upon their return to Mombasa in January 2013, the Petitioner found another woman in her matrimonial home. Upon enquiring from her husband, they had a serious disagreement and the Petitioner left for her parents' home, also in Magongo, Mainland. From that time, the Respondent made no effort to seek her out but continued to live together with the other woman. The Petitioner sought help from FIDA-Kenya for child support and the Respondent agreed to support the child. However, the Respondent never once supported the child but instead fled to Nairobi where he lives with the other woman. Since then he has not communicated with the Petitioner nor does he take her calls. She prayed that she be set free from the marriage.

5. The Marriage Act, 2014 at Section 65 stipulates the various grounds upon which a Christian marriage may be dissolved. These include:

(a) one or more acts of adultery committed by the other party;

(b) cruelty, whether mental or physical, inflicted by the other party on the petitioner or on the children, if any, of the marriage;

(c) desertion by either party for at least three years immediately preceding the date of presentation of the petition;

(d) exceptional depravity by either party;

(e) the irretrievable breakdown of the marriage”

6. The Petitioner seeks dissolution of the marriage on the ground of cruelty, adultery and desertion. The Respondent did not file any appearance. The Petitioner’s testimony therefore remains uncontroverted. The Petitioner testified that upon her return from Tanzania in January 2013, she found another woman in her matrimonial home upon which the parties disagreed and the Petitioner went to her parent’s home. The Respondent made no effort to seek the Petitioner out for reconciliation. Instead, continued to cohabit with this other woman. Subsequently, after committing to support their child, he fled to Nairobi without paying any support for the child. There is no doubt that the turn of events in January 2013 and thereafter caused the Petitioner severe mental and emotional anguish. Her evidence remains uncontroverted and I have no reason to doubt the veracity of the same. The conduct of the Respondent including failure to provide for the child of the marriage amount to cruelty and adultery.

7. From the material before me, I am satisfied that there is no hope for this marriage. It has irretrievably broken down. Accordingly, I pronounce a decree of divorce and order that the marriage solemnised on 26.9.10 at the [Particulars withheld] Church, Mombasa be and is hereby dissolved. Decree *nisi* to issue and the same to be made absolute within 1 month. That matter concerning the custody and parental responsibility of the child of the marriage may be pursued at the Children’s Court which has jurisdiction in the first instance. Each party shall bear own costs.

DATED, SIGNED and DELIVERED in MOMBASA this 17th day of February 2017

M. THANDE

JUDGE

In the presence of: -

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

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

.....**Court Assistant**