



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**FAMILY DIVISION**

**DIVORCE CAUSE NO. 17 OF 2012**

**G K D.....PETITIONER**

**VERSUS**

**G S P.....RESPONDENT**

**JUDGEMENT**

1. Marriage was celebrated between the parties herein on 8<sup>th</sup> May 1998 at the Registrar's Office at Nairobi. A certificate of marriage, serial number *particulars withheld*, was duly issued under the Marriage Act, Cap 150, Laws of Kenya (now repealed). The couple was blessed with issue, Arvin Singh, born on 7<sup>th</sup> February 2006. The parties thereafter cohabited at various addresses within Nairobi.

2. The petition dated 6<sup>th</sup> February 2012 was lodged herein on 7<sup>th</sup> February 2012, seeking dissolution of the marriage, injunction to restrain the respondent from harassing and interfering with the petitioner, maintenance for the petitioner, and costs. In it, it is pleaded that the marriage between the parties has irretrievably broken down, and the petitioner accuses the respondent of cruelty, desertion and wilful neglect. She has particularised grounds of cruelty, desertion and wilful neglect, upon which he relies to urge the court to dissolve the marriage.

3. Upon being served, the respondent filed an answer to the petition as well as a cross-petition. In the answer, he denies all the allegations made against him in the petition. He cross-petitions for the dismissal of the petition, dissolution of the marriage, injunctions to restrain interference with his life by the petitioner and costs. He founds his cross-petition on cruelty, and he has itemised several grounds. He pleads that the marriage has irretrievably broken down and cannot be salvaged.

4. The petitioner testified on 18<sup>th</sup> April 2013. Her testimony largely gave vent to the allegation made in her petition. On maintenance she referred the court to her application on record dated 20<sup>th</sup> July 2012. She testified that the respondent had been providing for her during the course of the marriage, with practically everything, including trips abroad. She mentioned that she ran two businesses at the Ukay Centre, but claimed that they were not successful. She stated that the respondent's businesses did better than hers. She called her brother-in-law, M S C, as a witness. He testified that the respondent had neglected the petitioner and that he has been forced to step in to assist her. He said that she makes about Kshs. 50, 000.00 per month from her businesses and that he assists her every month with Kshs. 100, 000.00 to Kshs. 150, 000.00.

5. The respondent testified on 3<sup>rd</sup> March 2016. His testimony breathed life to the averments made in his pleadings. He stated that he used to take care of the household expenses, while the petitioner spent her considerable earnings on herself. He said that he could not afford to pay her alimony as she lived a lavish lifestyle.

6. At the conclusion of the oral hearing, the parties filed their written submissions, complete with the authorities that they relied on.

7. Regarding the marriage it is clear that the marriage is at an end. The parties have been living apart for some time now. They have made various accusations against each other. Efforts to reconcile have failed. Both seek dissolution of the marriage, and have pleaded that the same has broken down irretrievably. I shall accordingly allow the prayer for dissolution of the marriage on the grounds that the same has broken down and there is not possibility of salvaging it.

8. On the injunctions sought by the parties, I do note that not much evidence was led thereon. Therefore no sufficient basis has been laid for grant of that prayer. Upon dissolution of the marriage, the parties resume the status of singlehood, and neither party has any right to interfere in the life of the other. A restraining order should not be made in the circumstances, unless there are compelling reasons. None have been established in this case.

9. On maintenance, it is understood that the same is sought with respect to the needs of the petitioner. I am told that there is a suit on the child pending at the Children's Court. All the issues relating to custody and maintenance of the child should be taken care of there.

10. It is common ground that during the marriage it was the respondent who financed the domestic budget. The petitioner alleged that she earned little; hence she had no capacity to provide any support in that direction. The respondent claimed that she had good earnings but that she spent the same on herself. She has proposed several figures for her maintenance. She filed an application dated 20<sup>th</sup> July 2012, where she claimed maintenance at the rate of Kshs. 400, 000.00 per month. Curiously, her affidavit in support of that application, sworn on 20<sup>th</sup> July 2012, puts the respondent's monthly earnings at Kshs. 150, 000.00, and she has averred on oath that the money she needs monthly for her upkeep is Kshs. 50, 000.00. She then swore another affidavit on 13<sup>th</sup> March 2013, where her monthly needs dramatically rose from Kshs 50, 000.00 to Kshs. 442, 000.00, and she invited the court to ignore the averments made in the affidavit sworn on 20<sup>th</sup> July 2012.

11. The law does provide for grant of orders for alimony payable by the ex-husband to his former wife. The foundation for the relief is historical. It arose out of the genuine need to guard against former wives being rendered destitute upon divorce, for historically wives did not work or engage in business, they were strictly housewives, and upon divorce they risked walking away empty handed. The law intervened to protect them in that respect.

12. That was then, when wives were neither in business nor employment. Things have changed. Womenfolk, including wives, have joined the labour market and are running successful businesses. That, no doubt, has called to question the whole concept. Today, whereas the principle is still alive, it is applied only in deserving cases. It has to be demonstrated that the ex-wife is needy of support from her former husband. Where the support has to be provided it is not forever, or for the life time of the ex-spouse. She is expected to take steps to be self-reliant. She should take up employment or set up herself in business or find a trade. She cannot just sit back to be provided for.

13. Article 45(3) of the Constitution of Kenya, 2010, is in that spirit when it states that parties to a marriage are entitled to equal rights at the time of the marriage during marriage and at the dissolution thereof. That has been interpreted in number of cases, among them WMM vs. BML (2012) eKLR, where it was noted that each party was expected to provide for themselves upon divorce, save in cases where a spouse was genuinely destitute. None was to turn the other into a beast of burden.

14. From the material that has been placed before me, it is clear that the petitioner is in business. She claims that the businesses were not doing well, but no proof of that was provided. I find her position on her needs a little contradictory. She flip flops from one position to another. Her application dated 20<sup>th</sup> July 2012 is for a claim of Kshs. 400, 000.00 as monthly maintenance, yet the affidavit puts her needs at a paltry Kshs. 50, 000.00. She averred that the respondent earned Kshs 150, 000.00 per month, which would be good for a claim of Kshs. 50, 000.00, but that would not sustain monthly support at Kshs 400, 000.00. Then six months down the line she swears another affidavit which contradicts the earlier one. She puts her needs at Kshs. 442, 000.00 per month, and asserts that the respondent earns much more than Kshs. 150, 000.00 per month. She has not withdrawn the earlier affidavit. So we have on record two affidavits stating on oath two completely contradictory positions. I can only conclude that the petitioner is being speculative. If her income from her businesses is Kshs 50, 000.00, and her monthly needs are also within that region, then she is in no need of maintenance.

15. In the circumstances, I am moved to make the following final orders:-

**(a) That I allow both the petition herein dated 6<sup>th</sup> February 2012 and the cross-petition dated 9<sup>th</sup> March 2012, and decree that the marriage between the petitioner and the respondent, celebrated on 8<sup>th</sup> May 1998, is hereby dissolved;**

**(b) That decree nisi shall issue forthwith, to be made absolute after thirty (30) days; and**

**(c) That there shall be no order as to costs.**

**DATED, SIGNED and DELIVERED at NAIROBI this 3<sup>RD</sup> DAY OF FEBRUARY, 2017.**

**W. MUSYOKA**

**JUDGE**