

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MALINDI
DIVORCE CAUSE NO. 9 OF 2016

J.M.B.....PETITIONER

VERSUS

E.M.M.....RESPONDENT

JUDGEMENT

The parties herein got married on 17.10.1998 under the African Christian Marriage and Divorce Act. The marriage was blessed with two children. The first born is twenty years old while the second born is fifteen years old. Both children live with the petitioner. On 16.5.2016 the petitioner filed this divorce cause seeking to have the marriage dissolved. The respondent filed her answer to the petition whereby she is also seeking for the dissolution of the marriage.

During the hearing of the petition, the petitioner relied on his petition. He testified that they have not lived together for over six years. He would like to have the marriage dissolved. On her part, the respondent informed the court that she is also seeking the dissolution of the marriage and relied on her pleadings.

The grounds upon which the petition was brought are that the respondent committed acts of cruelty, adultery and desertion. It is stated that the respondent abandoned the children and the petitioner has been single handedly taking care of the children. For a period of over six years the parties have lived separately. It is also alleged that the respondent has been having affairs with several other men. The respondent states in her answer to the petition that she was denied conjugal rights and subjected to emotional and mental anguish. It is further alleged that after the solemnization of the marriage, the petitioner took the respondent to a bar and had her employed as a bar maid. This exposed the respondent to an environment which caused her health complications. The petitioner also took the respondent to his parents' rural home which is quite remote and abandoned her there while the petitioner was living at Gongoni. The respondent maintains that the marriage has irretrievably broken down.

From the pleadings and the evidence of both parties, it is clear that the marriage has run to its bottom end. Parties have been living together since 1998 until six years before the filing of this petition. That will give a period of from 1998 to the year 2000. Parties have lived separately for over six years. The petitioner alleged that the respondent is now fully married. It is established that the marriage has broken down and there is no hope of reconciliation. I had the advantage of seeing the parties. They are both mature and understanding. It is clear to me that they all seek to go their separate ways. There are no signs of animosity or hatred between the two parties. It is only that the love that existed between the two has been exhausted. There is no need to maintain the marriage. Each party is resigned to the fact that the marriage ought to be dissolved.

I do find that the petitioner has proved his case. The parties have lived separately for over six years. That is enough reason to have the marriage dissolved. The marriage between the parties has irretrievably broken down and cannot be brought back to life. The marriage is hereby dissolved. A decree nisi shall issue forthwith. The same shall be made absolute after the expiry of two months. Parties shall bare their own costs.

Dated and delivered Malindi this 22nd day of February, 2017.

S.J. CHITEMBWE

JUDGE