



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA
FAMILY DIVISION
DIVORCE CAUSE NO. 8 OF 2016

P O..... PETITIONER

VERSUS

C M RESPONDENT

JUDGMENT

1. PO the Petitioner herein married CM the Respondent herein on 11.5.13 at the St. Stephen's Cathedral, Kisumu. The couple was issued with marriage certificate serial number [particulars withheld] . A certified copy of the marriage certificate serial number [particulars withheld] was produced in Court as proof of the fact of the marriage. **The Petitioner is civil servant working with [particulars withheld] at the Mombasa County Director's Office while the Respondent works with [particulars withheld] . Following the marriage, the couple cohabited in Kisumu for 2 weeks and thereafter in Mombasa. The marriage is blessed with 1 child GA born on 24.9.13.**

2. The Petitioner has filed the Petition herein dated 3.10.16 seeking the dissolution of his marriage to the Respondent. The grounds upon which the Petitioner seeks divorce are cruelty and adultery. The Respondent was served with the Petition and Notice to Appear but failed to file appearance. The matter therefore proceeded as an undefended cause.

3. In his Petition which he backed up with his uncontroverted testimony, the Petitioner states he lived and worked in Kisumu while the Respondent lived in Mombasa. He however managed to secure a transfer to Mombasa. Since the celebration of the marriage, the Respondent has treated him with cruelty. When he came to Mombasa on transfer, he went to her house at Kachonjo but found that she had moved out without telling him. He called her and she gave him directions to her house in Makande where she was staying. They fought over the fact that she had not told him that she had moved. She often spent nights away from the matrimonial home while denying the Petitioner his conjugal rights. She refused to take up her responsibilities as a wife, was abusive towards the Petitioner and treated him and his parents with disrespect and contempt. One day in August 2014, after a fight, she asked him to leave which he did as the house they were staying in was provided by her employer. In June 2015, they reconciled and he moved back in with her. One day in August 2015 while at work, he was summoned to the Makupa Police Station where upon reporting, he found the Respondent had lodged a claim against him accusing him of threatening to kill her. The Police asked him to move out of the house which he did. Since that time, they have not resumed cohabitation. According to him, the Respondent does not talk to her and does not want him in her life. He prayed for the dissolution of the marriage.

4. I have considered the Petition and the uncontroverted testimony of the Petitioner. The marriage herein was conducted at [Particulars withheld] in Kisumu. It is therefore a Christian marriage. The Marriage Act,

2014 at Section 65 provides for the 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”

5. The Petitioner seeks dissolution of the marriage on the ground of cruelty and adultery. The Petitioner’s evidence is that the Respondent was cruel to him in that she did not respect him as her husband and was abusive and disrespectful to him and his parents. She treated him with contempt and even chased him away from the matrimonial home which had been provided by her employer. I have no doubt the conduct of the conduct of the Respondent must have caused him severe mental, emotional and psychological anguish.

6. On the ground of adultery, though his testimony has not been controverted, the Petitioner has not provided any names or specific incidences which would demonstrate to the Court that the commission of the alleged acts of adultery. Consequently, I am not satisfied that the ground of adultery 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 August 2015 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 on** 11.5.13 at [Particulars withheld], Kisumu 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 3rd day of February 2017

M. THANDE

JUDGE

In the presence of: -

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

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

..... **Court Assistant**