



REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI
MILIMANI
FAMILY DIVISION
DIVORCE CAUSE NO. 147 OF 2014

IN THE MATTER OF THE MARRIAGE ACT, CAP 150 LAWS OF KENYA

AND

IN THE MATTER OF THE MATRIMONIAL PROPERTY ACT, CAP 152 LAWS OF KENYA

D N N.....PETITIONER

VERSUS

S O A.....RESPONDENT

JUDGMENT

Introduction

The Petitioner herein who filed the petition dated 23rd June 2014 to have his marriage to the Respondent dissolved is a male adult who resides in Nairobi.

The Petitioner was married to the Respondent on 25th May 2011 as evidenced by their marriage certificate of serial no. [Particulars withheld] and they both thereafter lived in Kileleshwa, Nairobi. The marriage was a Christian marriage. The parties were blessed with one child (B H M) born on 7th June 2010.

Petitioner's case

In his petition dated 23rd June 2014, the Petitioner stated that since the celebration of the said marriage, the Respondent has been treating him with cruelty. The particulars of the cruelty were stated in paragraph 8 of the petition. The Petitioner further stated that due to the cruelty as pleaded, he suffered mental anguish and that caused him to leave his matrimonial home.

In his Answer to Cross Petition dated 29th October 2014, the Petitioner stated that he and the Respondent have not resided together since August 2013 due to the actions of the Respondent.

At the hearing of his petition, the Petitioner stated that his marriage had suffered tension and had broken down. He further stated that he is ready and willing to provide and care for their child even after the dissolution of the said marriage.

He prayed that the marriage be dissolved and that he and the Respondent be granted joint custody of the child.

Respondent's case

The Respondent defended her cause by filing an Answer to Petition and a Cross Petition dated 22nd September 2014. She admitted to being married to the Petitioner but denied to the allegations of cruelty. In the alternative, the Respondent stated that the Petitioner was cruel, adulterous and a drunkard. Particulars of cruelty, adultery, desertion and irresponsibility were stated in paragraph 3 of the Cross Petition.

Further, she stated that their marriage has irretrievably broken down and therefore prayed for the dissolution of the marriage, full custody of the child and alimony of Ksh. 200,000/- per month from the Petitioner.

DETERMINATION

In light of the various pleadings filed by both the Petitioner and the Respondent, both parties have accused each other of cruelty and other matrimonial offences. By the time this matter was brought to Court, the parties were already living apart from each other due to the tension within the marriage. It was also admitted by both parties that the marriage had irretrievably broken down and there is no room for reconciliation and that is why both parties pray for the marriage to be dissolved.

Section 65 of the Marriage Act, 2014 provides,

“A party to a marriage celebrated under part III may petition the Court for the dissolution of the marriage on the ground of –one or more acts of adultery committed by the other party; cruelty whether mental or physical, inflicted by the other party on the Petitioner or on the children, if any, of the marriage; or desertion by either party for at least 3 years immediately preceding the date of presentation of the petition; exceptional depravity by either party; the irretrievable breakdown of the marriage.”

In ***NMM v SJC Divorce Cause No. 1 of 2013***, it was held that where it is apparent that a marriage has irretrievably broken down such that there is no room for reconciliation, it would be in the interest of justice as well as in the interests of the parties to dissolve the marriage and allow them to move on with their respective lives.

Given that both parties raised particulars of cruelty and other marital offences that led to the breakdown of the marriage, the Court finds that the marriage has irretrievably broken down. In addition, given that parties are currently living apart from each other and there is no room for reconciliation, the Court finds that it is in the best interest of the parties that their marriage be dissolve.

Issue of maintenance

Section 77(1) (d) of the Marriage Act, 2014 provides that,

“...the Court may order a person to pay maintenance to a spouse or a former spouse when granting or after granting a decree of separation or divorce.”

The Act grants Court's discretion on issues of maintenance. However, it does not outline the parameters under which alimony should be assessed and therefore this will depend with the circumstances of each case.

In this matter, the Respondent prayed to be granted alimony of Ksh. 200,000/- monthly by the Petitioner. This notwithstanding, The Respondent has not provided any evidence to prove the basis of the figure of Ksh. 200,000/- amount which she quantifies as the maintenance amount. In this regard, the Court requires that the Parties who claim alimony ought to file Affidavits of means clearly detailing each party's financial resources, obligations and responsibilities.

Issue of Custody

On the issue of the custody of the child, paragraph 3 of the Answer to the Petition states that Milimani Children's Court Case No. 716 of 2014 exists. There being a pending case dealing with the issue of the Child's legal custody, this matter shall be heard and determined in the Children's Court.

DISPOSITION

In light of the above analysis, this Court hereby dissolves the marriage between the Petitioner and the Respondent celebrated on 21st May 2011. A decree *nisi* is hereby issued and will be made absolute within 30 days. The Petitioner and the Respondent may file their respective affidavits of means in Court to enable the Court dispose of the issue of the maintenance. Physical custody of the Child shall remain with the Respondent with agreed visitation rights pending the hearing and determination of the Children Case No. 716 of 2014 in the Children's Court. If either party is aggrieved by the decision, they are at liberty to apply to this Court. There are no orders as to costs.

It is so ordered.

DELIVERED DATED SIGNED IN OPEN COURT 6TH MARCH, 2017.

M. W. MUIGAI

JUDGE