



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 84 OF 2014

J C PETITIONER

VERSUS

J K RESPONDENT

JUDGMENT

This is a petition for divorce filed on 24th April 2014 by the Petitioner, J C against the Respondent, J K for dissolution of the marriage between the Petitioner and the Respondent, grant of actual and legal custody of the child of the marriage and for costs of the petition. The Petitioner and the Respondent solemnized their marriage on 10th July 1998 when they were married at the Office of the Registrar in Nairobi. A copy of the Certificate of Marriage was produced in court as proof of the marriage. The Petitioner states that following the celebration of the marriage, she cohabited with the Respondent in Ongata Rongai and Umoja estates within Nairobi. There is one issue of the marriage, namely N K born on 6th January 1999.

In her petition of 24th April 2014, the Petitioner accuses the Respondent of committing the matrimonial offence of cruelty. In her particulars of cruelty, the Petitioner accused the Respondent of treating her with disrespect, using foul language towards her, absenting himself from the matrimonial home for long periods on numerous occasions without any explanation for his absence, having unwarranted fits of anger directed at her, refusing to conform his life to that of a married man, not contributing towards raising the child of the marriage and denying her conjugal rights. The Petitioner stated that her marriage to the Respondent has irretrievably broken down. She also stated that attempts made to reconcile proved futile.

The Respondent was served with the Petition and the Notice to appear on 25th January 2016. He filed an answer to the petition together with a cross petition on 5th February 2016. In his answer to the petition, the Respondent denied the allegations levelled against him by the Petitioner and maintained that it was the Petitioner's acts of cruelty, adultery and desertion that resulted to the breakdown of the marriage. The allegations of cruelty against the Respondent as illustrated by the Respondent in his answer to petition and cross petition for divorce were; using abusive language towards him, refusing to talk to him for no reason, violence and refusal of conjugal rights since the year 2001. On the allegations of adultery allegedly committed by the Petitioner, the Respondent claimed that the Petitioner had admitted to having extramarital love affairs with other men. As to the allegation of desertion on the part of the Petitioner, the Respondent accused the Petitioner of leaving the matrimonial home in the year 2001 to date. He was also of the view that the marriage has irretrievably broken down. According to the Respondent, the Petitioner had frustrated all attempts at reconciliation. He stated that he had not condoned the Petitioner's acts of cruelty, adultery and desertion and therefore sought for orders from this court for dismissal of the Petitioner's petition, dissolution of the marriage between the Petitioner and the Respondent and an order for costs of the petition.

The petition was heard on 26th January 2017, and the Petitioner gave oral evidence and stated that she works as an accountant at [particulars withheld]. She testified that she lawfully married the Respondent on 10th July 1998. She testified that it is the Respondent's acts of cruelty towards her as stated in her petition for divorce that have led to the breakdown of the marriage despite efforts by family members and friends to reconcile them.

She testified that the Respondent left the matrimonial home in the year 2001 and has not returned to date. They have been living separately since then. According to the Petitioner, her marriage to the Respondent has irretrievably broken and could not be salvaged.

From the pleadings and the oral evidence adduced in this case. The petitioner based her petition for divorce against the Respondent on the grounds of the matrimonial offence of cruelty allegedly committed by the Respondent. The Petitioner's case is that the Respondent has been cruel toward her. She accused him of treating her with disrespect, being verbally abusive towards her, regularly staying out of their matrimonial home for long periods without informing her of his whereabouts, exhibiting unwarranted fits of anger directed at her, refusing to conform his life to that of a married man, not contributing towards raising the child of the marriage and denying her conjugal rights. The Petitioner's evidence was uncontroverted.

This court has carefully considered the said grounds of divorce. It was clear that the marriage between the Petitioner and the Respondent had indeed irretrievably broken down. Further, the fact that the Petitioner and the Respondent and the Respondent have been separated for over fifteen (15) years is proof that the marriage could not be salvaged.

This court therefore holds that the Petitioner proved to the required standard of proof on a balance of probabilities that indeed she is entitled to the order for divorce as sought in her petition for divorce.

The evidence of the Petitioner was not controverted by evidence of the Respondent. **Section 66 2 (a) (b) (c) of Marriage Act 2014** spells out the grounds of divorce in a civil marriage. The Petitioner claimed in her Petition particulars of cruelty by the Respondent. In the absence of evidence to counter her claims, the grounds of cruelty are upheld. Since they are separated for considerable period of time, the marriage has irretrievably broken down.

The Petitioner has also sought for an order for custody of the child of the marriage. **Sections 73 and 118** of the **Children Act** provides as follows in so far as proceedings relating to the custody and welfare of children is concerned;

"It is the Children's Court which has jurisdiction in the first instance to consider all questions relating to the custody and maintenance of children."

In view of the foregoing, the Petitioner is advised to file an appropriate case in the children's court.

Accordingly, judgment is entered as prayed against the Respondent for the following orders;

DISPOSITION:

- a) The marriage solemnized between the Petitioner and the Respondent at the Registrar's office in Nairobi on 10th July 1998 is hereby dissolved.**
- b) Decree nisi to issue and in thirty (30) days decree absolute to issue.**
- c) Each party to bear their own costs.**

READ AND SIGNED AT NAIROBI THIS 13TH DAY OF MARCH 2017.

M. W. MUIGAI

JUDGE

In the presence of: