



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA

DIVORCE CAUSE NO. 25 OF 2016

R O K.....PETITIONER

VERSUS

M J B.....RESPONDENT

JUDGEMENT

1. On 9.10.03, R O K the Petitioner herein married M J B the Respondent herein at the Registrar's Office in Mombasa. At the time of the marriage, the Petitioner had 1 child, O O from another relationship. The parties thereafter had a child together M K B who was born on 17.5.17. The Petitioner has filed this Petition dated 24.3.16 seeking the dissolution of her marriage to **the Respondent**.

2. The Petitioner cites desertion and cruelty as the grounds upon which she seeks the dissolution of the marriage. The Petitioner avers that since August 2011, the Respondent has wilfully abdicated his responsibilities as a husband and father. He neglected meeting the educational needs of the child of the marriage and remained aloof and cold to the child thereby occasioning the Petitioner pain and psychological stress. The Respondent left the matrimonial home in 2014 and has not returned. All attempts at reconciliation have failed and the marriage has irretrievably broken down. She prayed for dissolution of the marriage and costs.

3. In his Reply dated 5.10.16, the Respondent denies the allegations of cruelty. He avers that he gave the Petitioner money for school fees for the children. He has been a father to them and they love him. He has even lived with his in laws since his parents in law died and they are now grown up. According to the Respondent, things started changing when they purchased a property in Kitale. After he processed the title, the Petitioner took it. The Respondent further claimed that the Petitioner treated him with cruelty and even threatened to poison the entire family. The house in which they lived was provided by the Petitioner's employer. The Respondent denies deserting the Petitioner and claims that the Petitioner asked him to vacate the house in the pretext that she had been transferred. He moved out as she threatened him. From the time he moved out the Petitioner cut off all communication and does not respond when he tries to call her.

4. At the hearing, the Petitioner and the Respondent gave vent to the allegations in the Petition and the Reply. In her evidence in support of her Petition, the Petitioner stated that upon marriage the parties cohabited in [Particular Withheld] in a house provided by [particular Withheld], her employer. She stated that upon the death of her parents, she took in her 2 younger sisters but the Respondent began to sexually harass them. He also sexually harassed the Petitioner's niece and the maids employed in the house. She further stated that the Respondent mistreated her son and rejected him as he was not his biological child. The Petitioner called her aunties to try and resolve the issue. They told the Respondent to leave so that he can decide what he wants. He left in 2005. The Petitioner stated that she bought a plot in Kitale through a loan she got and without the assistance of the Respondent. The marriage has irretrievably broken down

and the Petitioner prayed that the marriage be dissolved.

5. In his testimony, the Respondent stated that when they had a meeting with the Petitioner's aunts, there was no one from his family. The Petitioner wanted him out of the house and even told him she had been transferred. She told him she would start a fight and claim he was assaulting her. He left the matrimonial home as he was threatened and denies deserting the family. He too said he took a loan to purchase the Kitale property and is still repaying the same. He contended that he loves his family and asked the Court to order that they return to him as he is ready to take care of them.

6. I have considered the Petition and the reply as well the testimony of the parties. The marriage herein is a civil marriage having been solemnised at the Registrar's Office in Mombasa. The law relating to dissolution of marriages is found in Part X of the Marriage Act. Section 66(2) stipulates the grounds upon which a civil marriage may be dissolved. These include:

- a. adultery by the other spouse;*
- b. cruelty by the other spouse;*
- c. exceptional depravity by the other spouse;*
- d. desertion by the other spouse for at least three years; or*
- e. the irretrievable breakdown of the marriage"*

7. The Petitioner's allegations of neglect of the child of marriage by the Petitioner were denied by the Respondent. Other than merely making the accusations, no proof was proffered by the petitioner. At the hearing, the Petitioner alleged that the Respondent sexually harassed her sisters, niece and maids which the Respondent vehemently denied. However, this accusation was not pleaded in the Petition. I am therefore unable to find that the ground of cruelty has been established.

8. This is a sad situation where the Petitioner wants the dissolution of the marriage while the Respondent does not. It is not clear when the Respondent left the matrimonial home. In the Petition, the Petitioner says that he left in 2014 while in her testimony she stated that he left in 2005. Be that as it may, the fact remains that the parties have been separated for several years. The Respondent's efforts to reach out to the Petitioner have failed as she does not even respond to his calls.

9. The Court notes that since the Respondent left the matrimonial home, the parties have not resumed cohabitation. Given the long period of separation and the Petitioner's lack of interest in the marriage, it is clear that the marriage has irretrievably broken down. Irretrievable breakdown of a marriage is one of the grounds for dissolution of a civil marriage specified in Section 66(2) of the Marriage Act. Further, Section 3(1) of the Act defines marriage as the *VOLUNTARY UNION* of a man and a woman whether in a monogamous or polygamous union..." (emphasis mine). Marriage by definition is a voluntary union of a man and a woman. Although the Respondent wants to hold on to the marriage, this Court cannot by means of an order compel the parties herein to remain married when the Petitioner has stated categorically that she wants the same dissolved.

10. In view of the foregoing, I do pronounce a decree of divorce and order that the marriage between the Petitioner and the Respondent solemnized at the Registrar's Office in Mombasa on 9.10.03 be and is hereby dissolved. Decree *nisi* to issue and the same to be made absolute within 1 month. Each party to bear own costs.

DATED, SIGNED and DELIVERED in MOMBASA this 14th July 2017

M. THANDE

JUDGE

In the presence of: -

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

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

.....**Court Assistant**