



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 4 OF 2013

S.N.N PETITIONER

VERSUS

C.H.A RESPONDENT

JUDGMENT

S.N.N, the Petitioner filed a petition on 15th January 2013 seeking that the marriage between her and the Respondent, C.H.A be dissolved on the grounds of desertion and cruelty. The Petitioner and the Respondent solemnized their marriage on 6th January 2012 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 claims that after the celebration of the marriage, she cohabited with the Respondent within Nairobi County. There are no issues of the marriage. The Petitioner accuses the Respondent of committing the matrimonial offences of desertion and cruelty, particulars whereof she has listed in her petition for divorce. In particular, the Petitioner alleges that the Respondent has deserted the matrimonial home since March 2012 and had since then not returned to the said matrimonial home. In her particulars of cruelty, the Petitioner accused the Respondent of constantly sleeping out of the matrimonial home being temperamental, violent and exhibiting hostility towards her. It was for these reasons that the Petitioner asked the court to dissolve the marriage. She further sought for orders inter alia that she be granted a sum of Kshs. 50,000 per month as alimony pending the determination of the suit and that this court grants her an order for maintenance in such sums as the court may deem fit. The Petitioner further asked the court to make appropriate orders as to costs.

The Petitioner sought the leave of this court to file the petition for divorce before the expiry of the statutory period of three (3) years. The application was allowed on 28th November 2011. The Respondent was served with the Petition for divorce on 16th April 2013. He failed to enter appearance or file a response to the Petitioner's petition. The Deputy Registrar of this court after being satisfied that the Respondent had been duly served and failed to enter appearance and file his response, issued a Registrar's Certificate certifying that this cause was a suitable one to be disposed of by this court as an undefended divorce cause.

The Petitioner's petition was heard on 10th December 2015. During the hearing, the Petitioner abandoned her prayers for alimony, maintenance and costs of the suit. She gave oral evidence reiterating the averments in her petition for divorce. She testified that she married the Respondent at the Office of the Registrar in Nairobi on 6th January 2012. She testified that following the celebration of the marriage, she cohabited with the Respondent for two (2) months in Kangemi within Nairobi County before they travelled to China to visit the Respondent's family. The Petitioner testified that they had planned to stay in china for at least two (2) years. She told the court that while in China, the Respondent's family was against their interracial marriage. She testified that with the pressure from his family, the Respondent

became hostile towards her and ultimately abandoned her in China. She testified that she had to travel back to Kenya ten (10) days after she arrived in China. The Petitioner testified that since then she has not seen or spoken to the Respondent. According to the Petitioner, the Respondent's conduct amounted to cruelty.

From the pleadings and the oral evidence adduced in this case, the issue for determination by this court is whether the Petitioner in this suit adduced sufficient evidence in her presentation to warrant the grant by this court of the order for divorce. The evidence on record shows that the Petitioner and the Respondent contracted a civil marriage. Thus, the applicable law concerning the dissolution of their marriage is to be found in **Section 66** of the **Marriage Act 2014** which provides:

“(1) A party to a marriage celebrated under Part IV may petition the court for the separation of the parties or the dissolution of the marriage unless three years have elapsed since the celebration of the marriage.

(2) A party to a marriage celebrated under Part IV may only petition to court for the separation of the parties or the dissolution of the marriage on the following grounds-

- 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.”***

By her petition of 15th January 2013 the Petitioner seeks to have her marriage to the Respondent dissolved on the grounds of alleged desertion and cruelty. This court granted the Petitioner leave to file this petition for divorce before the expiry of three (3) years on 28th November 2011. It is clear from the evidence adduced in court that the Petitioner established that the Respondent has treated her with cruelty. The Respondent became hostile towards the Petitioner due to pressure from his family to leave her. He abandoned her in a foreign country and she had to return back to her country. The evidence adduced by the Petitioner was not contested by the Respondent. In the premises therefore, the Petitioner proved her case on the ground of cruelty to warrant the grant of an order for divorce by this court.

This court therefore orders as follows;

- a. The marriage between the Petitioner and the Respondent celebrated on 6th January 2012 is hereby dissolved.
- b. Decree nisi to issue and in thirty (30) days decree absolute to issue in 60 days.

DELIVERED AND SIGNED IN OPEN COURT AT NAIROBI THIS 8TH DAY OF FEBRUARY, 2016

M.W. MUIGAI

JUDGE

In the presence of:

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