



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 223 OF 2012

BETWEEN

M M NPETITIONER

AND

F M K.....RESPONDENT

JUDGEMENT

1. On 15th December, 2007 the Petitioner then a spinster known as M M K was lawfully married to the Respondent F M K then a bachelor and a certificate Serial No. [particulars withheld] issued to them in accordance with the **Marriage Act Cap 150 Laws of Kenya**. The marriage was celebrated at Holy Family Basilica in Nairobi and thereafter they cohabited as husband and wife at [particulars withheld] Union, New Jersey. There are at issues of the marriage.
2. At the time of filing the Petition both the Petitioner and Respondent were domiciled in New Jersey, United States of America where the Petitioner works as a designer and the Respondent is in marketing.
3. The Petition filed on 21st November, 2012 is premised on grounds of cruelty and adultery said to have been occasioned by the Respondent against the Petitioner. Upon being served with the process, the Respondent filed his Answer to the Petition. He subsequently filed a cross petition and denied all the grounds advanced by the Petitioner, calling the Petitioner to strict proof thereof. In the cross petition he too prayed that the marriage between the Petitioner and the Respondent be dissolved.
4. On 21st November, 2013 the Deputy Registrar certified that the matter was suitable to proceed for hearing as a defended cause for one day in Nairobi. At the hearing on 23rd June, 2016, the Petitioner testified and reiterated what she had set out in the Petition. The Respondent did not take the stand to testify but his Answer to the petition and the cross-petition were adopted in evidence.
5. With regard to the acts of cruelty, the Petitioner accused the Respondent of having shown total contempt towards the marriage, and of being cold, passive and withdrawn towards the Petitioner. According to the Petitioner the consequence of the Respondent's attitude towards the marriage was lack of matrimonial love and commitment on his part in the marriage, and that this occasioned the petitioner unnecessary mental anguish. The petitioner asserted that the Respondent caused her immeasurable suffering severe stress and emotional distress due to his attitude, constant quarrels and lack of love and companionship in the marriage.

6. On the acts of adultery, the Petitioner complained that the Respondent used to stay out late and had on several occasions been seen in entertainment places with third parties and acquaintances that were of questionable character. Further that the Respondent had illicit and adulterous relationships with women, most of whose acquaintances he made through the internet. It is the Petitioner's contention that this behaviour and conduct heightened suspicion and mistrust in their marriage.

7. During the hearing, the Petitioner told the court that due to the aforesaid acts of cruelty and adultery, she and the Respondent could not continue to hold out as husband and wife. She, therefore, asked the court to dissolve the marriage between her and the Respondent.

8. In his Cross-Petition, the Respondent stated that the Petitioner had, during the subsistence of the marriage, deserted the Respondent of her own volition leaving him without a companion. He complained that the Petitioner had on several occasions treated the Respondent with contempt and at one time attempted to cause a fatal accident while they were in their car. The Respondent asserted that the Petitioner is a person of "immeasurable" temper and had on several occasions assaulted the Respondent. Further that while they stayed together, she broke household goods and put the property of the home to untold destruction. It was his view that the Petitioner had failed to provide love and companionship and had fully avoided the matrimonial bed.

9. I have perused the grounds of the Petition, the Answer thereto and the grounds of the Cross-petition. I have also considered the oral evidence of the Petitioner as tendered in court. What is not disputed is that the parties have lived apart for the last seven years and there has been no attempt at reconciliation by either side. It is also clear that there are irreconcilable differences between them and both parties want the marriage celebrated between them to be dissolved.

10. They confirm that this Petition has not been presented or prosecuted in collusion, neither have they connived or condoned the matrimonial offences which each has complained of. They both certify that there have been no previous proceedings filed regarding the marriage.

11. From the foregoing I make a finding that due to the matrimonial offences set out above and which have been proved on either side on a balance of probabilities, the marriage between this two parties remains in-existence on paper only. The marriage celebrated between the parties herein on 15th December, 2007 has broken down irretrievably and cannot be salvaged. At least, there is no will on either side to salvage it.

In the premise I make the following orders:

- a. That the marriage celebrated between the Petitioner and Respondent at the Holy Family Basilica in Nairobi on 15th December, 2007 is hereby dissolved.
- b. That Decree nisi dissolving the said marriage is hereby issued to be made absolute thirty (30) days from the date of this judgment.
- c. There shall be no orders as to costs.

SIGNED DATED and DELIVERED in open court this **14th day of July 2016.**

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L. A. ACHODE

JUDGE