



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MALINDI
DIVORCE CAUSE NO. 13 OF 2016
D K M PETITIONER
VERSUS
R N M RESPONDENT
JUDGEMENT

The petitioner and the respondent got married on 20.4.1988. They were blessed with two children. Currently the petitioner lives in the Dabaso in Kilifi County while the respondent lives in the United states of America. The petitioner brought this petition seeking the dissolution of the marriage on the ground of cruelty. The respondent was served but did not attend. The matter proceeded undefended.

During the hearing, the petitioner relied on his petition and a further affidavit sworn on 12.10.2016. It is the petitioner's evidence that the respondent has failed to show love and affection to him and has denied him conjugal rights. The respondent left the matrimonial home sometimes in August 2000. She deserted him without any good reason and withdrew cohabiting with him. The parties were living at [Particulars withheld] Estate in Nairobi. It is now sixteen years from 2000 and the parties have never lived together. It is petitioner's evidence that there is no hope or possibility of reconciliation or compromise between the parties. The differences between the two are irreconcilable and the marriage has irretrievably broken down. Nothing can salvage the marriage. The petitioner is not an accessory to the desertion.

Mr. Binyenye, counsel for the petitioner filed written submissions. Counsel contend that the marriage was solemnized under the Marriage Act which is now repealed. The parties lived as husband and wife. The marriage has now broken down. Section 66 (2) of the Marriage Act, 2014 provides for the grounds of dissolution of a marriage and state as follows: -

“A party to a marriage celebrated under Part IV may only petition the 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.”***

The marriage has completely broken down as the respondent has deserted the petitioner. It is now sixteen years and the parties are living apart. The old Marriage Act Cap 150 which is now repealed provided for civil marriages before the Registrar's Office. Section 29 of the Act provided for the manner in which a civil marriage was to be conducted. Before the new Marriage Act, 2014, issues relating to dissolution of marriages were provided for under the Matrimonial Causes Act, Cap 152. Section 8 of that Act provided for the grounds of divorce. Section 8 (b) provided for desertion for a period of three years while section 8 (c) provided for cruelty.

The marriage certificate indicate that the marriage was solemnized under the Marriage Act, at the Registrar's Office, Nairobi. Section 24 of the Marriage Act, 2014 provides that a civil marriage shall be celebrated by the Registrar in the place determined by the Registrar. The marriage herein falls within the category of civil marriage. Section 66 of the Marriage Act provides for petition for divorce or separation. The grounds for dissolution of a marriage are stated herein.

Apart from section 66 (2), section 66 (6) states that a marriage has irretrievably broken down if any one of the following happens: -

- a. A spouse commits adultery;*
- b. A spouse is cruel to the other spouse or to any child of the marriage;*
- c. A spouse willfully neglects the other spouse for at least two years immediately preceding the date of presentation of the petition;*
- d. The spouses have been separated for at least two years, whether voluntary or by decree of the court, where it has;*
- e. A spouse has deserted the other spouse or at least three years immediately preceding the date of presentation of the petition;*
- f. A spouse has been sentenced to a term of imprisonment for life or for a term of seven years or more;*
- g. Any other ground as the court may deem appropriate.*

It is the petitioner's evidence that the respondent left the matrimonial home in August 2000. This is now a period of over sixteen (16) years. Two years' separation or neglect is sufficient ground for divorce. It is established that the marriage has irretrievably broken down. The parties have been separated for quite a long period and there is no hope that they can be brought together again. The respondent lives in the United States while the petitioner lives in Kenya. They have lived like that for over two years. This is sufficient ground under section 66 (6) of the Marriage Act, 2014 to have the marriage dissolved.

In the end, I am satisfied that this marriage has irretrievably broken down. The marriage between the petitioner and the respondent is hereby dissolved. since parties have lived separately for over sixteen years, I see no need of granting a decree nisi. A decree absolute shall issue.

Each party shall meet his/her own costs.

Dated and delivered in Malindi this 4th November, 2016.

S.J. CHITEMBWE

JUDGE