



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
IN THE MATTER OF THE MARRIAGE ACT, 2014
AND
IN THE MATTER OF A PROPOSED PETITION BY M W J FOR DISSOLUTION OF HER
MARRIAGE TO V M M
MISC. APPLICATION NO. 7 OF 2016

BETWEEN

M W JPETITIONER

AND

V M M.....RESPONDENT

R U L I N G

1. The Petitioner, M W J brought an Originating Summons dated 28th January, 2016 under **Rule 66(1)** of the **Marriage Act, 2014** laws of Kenya. She seeks orders giving her liberty to Petition for Divorce from her marriage with the Respondent notwithstanding the fact that three years are yet to lapse since the celebration of the said marriage. The marriage was solemnized on the 11th April 2015 at [particulars withheld] Church under the Marriage Act 2014.
2. The application is premised on grounds that the Petitioner and the Respondent are wife and husband having contracted a marriage on 11th April 2015. That the Respondent has since the celebration of the marriage treated the Petitioner with cruelty.
3. The Applicant alleges that the marriage between the Petitioner and the Respondent has irretrievably broken down with no chance of reconciliation. That the marriage has not been blessed with any issues. That the Petitioner can no longer persevere in her marriage to the Respondent till the lapse of the three (3) years as she continues to suffer emotionally.
4. The Petitioner swore an affidavit on 28th January 2016 in which she deposed that after the celebration of their marriage with the Respondent, they lived together as husband and wife at [particulars withheld], Kinoo together with her son whom she sired prior to the marriage. She complained that the Respondent frustrated her and treated her with cruelty and utter scorn.
5. She averred that due the Respondent's behaviour which was incompatible with the married life, she has

suffered emotional torture. The Petitioner further averred that in August 2015 the Respondent asked her to move out of the matrimonial home, and since then there has been no communication between them.

6. She confirms that there has been no previous application made by herself or the Respondent in respect of their marriage.

7. The Respondent filed a replying affidavit dated 22nd April, 2016 and averred that he was not opposed to the Petitioner's application but denied the allegations therein. He argued that the Petitioner's allegations in her Petition had been tailored to facilitate her pursuit of extra marital allegiances and dalliances with one Matt Patch a citizen of the USA, working in Kenya as a missionary with an NGO, [particulars withheld] at Mai Mahiu.

8. The Respondent asserts that he and the Petitioner had discussed their past relationships before they settled on their marriage. That the Petitioner confirmed that her ex-lover one Matt Patch had relocated to the USA a year before the parties agreed to settle down together. The Respondent complained that soon after they exchanged their vows on 11th April 2015, the Petitioner became gradually withdrawn, cold, irritable and difficult to connect with on all levels, that is emotional, social, spiritual, mental and physical.

9. The Respondent further averred that his mother-in-law informed his father that the Petitioner had found a white sponsor who was willing to take the Petitioner's son to the expensive [particulars withheld]

10. The Respondent's suggestion for the couple to go for counselling in order to improve their marriage was declined. Lengthy discussions with their pastor did not improve their marriage.

11. The Respondent states that the Petitioner left the matrimonial home on 24th August, 2015 to visit her son who had gone to his maternal grandmother's home for the holidays. That she stayed away for three weeks without any communication and returned on 15th September, 2015 only to collect her belongings.

12. I have carefully perused the application before me and the affidavits and submissions by learned counsels Mr. Irungu and Mr. Njeru for the petitioner and the respondent respectively. The counsels were in agreement that the marriage between the Petitioner and the Respondent had irretrievably broken down with no chances of being salvaged.

13. The Originating Summons before me is brought *inter alia* under **Section 66 (1)** of the **Marriage Act 2014** which provides that:

“A party to a marriage celebrated under Part IV may not petition the court for the separation of the parties or for the dissolution of the marriage unless three years have elapsed since the celebration of the marriage.”

Section 66 of the **Marriage Act** therefore does not grant the Court powers to grant leave to present a petition for dissolution of a marriage before the lapse of three years from the celebration of the marriage.

14. In the **Marriage Act 2014**, Parliament failed to make a proviso to Section 66 (1). Marriage is indeed a serious institution and parties ought not to enter into a marriage contract without giving it serious thought. Parliament however ought to have provided an exit route for parties who find themselves in an untenable union such as the one before me.

15. From the record, the Petitioner and the Respondent contracted their marriage on 11th April, 2015. Both parties accuse each other of cruelty and desertion, but the law has not opened a window for either of them to present a petition for the dissolution of this marriage before three years have elapsed since the celebration of the marriage.

Consequently, this court finds that the Originating Summons dated 28th January, 2016 has no basis in law and is therefore dismissed with no order as to costs.

SIGNED DATED and DELIVERED in open court this 8th day of December, 2016.

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L. A. ACHODE

JUDGE