



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 3 OF 2011

BETWEEN

O W.....PETITIONER

AND

E R KRESPONDENT

JUDGMENT

1. On 25th June 1974 the Petitioner, then a bachelor known as R O W was lawfully married to the Respondent E R K, then a spinster. The marriage was celebrated at the Registrar's Office in the District of Richmond Thames, England and a certificate Serial No. **[Particulars withheld]** issued to them in accordance with the **Marriage Act Cap 1949**. Thereafter they cohabited as husband and wife in Nairobi at **[particulars withheld]** Crescent Kileleshwa, Ngong road and Kilimani respectively.

2. They were blessed with four issues of the marriage, as follows:

1. O W born on 13th June 1975
2. O W born on 13th August, 1976
3. A W born on 30th August, 1980
4. N W born on 13th April, 1985

Both the Petitioner and Respondent are domiciled in Kenya where the Petitioner is an Engineer and the Respondent is a retired nurse.

3. On 17th January 2011 the Petitioner filed a petition seeking the dissolution of their marriage on grounds that for a period of more than ten (10) years preceding the filing of this Petition, the Respondent wrongfully and constructively deserted the Petitioner and was guilty of adultery and cruelty. The particulars of desertion were that in the year 2005, the Petitioner was forced to leave the matrimonial home and sought shelter in Government houses due to the Respondent's behaviour. That since 2001 the Respondent denied the Petitioner his conjugal rights, and that they slept in separate bedrooms within the matrimonial home. That the parties have been leading separate lives and the marriage between them has consequently come to an end.

4. Particulars of adultery as set out by the Petitioner were that the Respondent had since the celebration of the marriage been unfaithful and had adulterous unions with various men known and unknown to the Petitioner. That the Petitioner confirmed the Respondent's infidelity when she admitted to her HIV status. The Petitioner states that the Respondent has failed to be a companion to him, to communicate with him and consult him on issues in the matrimonial home and to show love and affection to him. Further that the

Respondent's excessive drinking led her to abandoning her responsibilities within the matrimonial home.

5. The Respondent was served with the Petition through a notice dated 17th January 2011. She filed an answer to the petition in which she denied the allegations made in the petition. She averred that in the year 2001, they were not separated and that it is the Petitioner who left the matrimonial home in 2007 with his suit case, never to return. Further that there was no provocation and that the separation was occasioned by the Petitioner.

6. The Respondent denied the allegations of adultery involving known or un-known persons and contended that the Petitioner's allegations were in bad taste and mere imaginations. She asserted that she did not desert the Petitioner or deny him conjugal rights. That in any case he never asked to enjoy his conjugal rights. That in fact it was the Petitioner who involved himself in an intimate adulterous relationship with one M M when he worked in Lesotho from 1992 to 1995, and sired a daughter with her. According to the Respondent this was also how he contracted HIV & AIDS with which he later infected her.

7. On 17th May 2012 the Deputy Registrar duly certified that the pleadings were in order and that the cause was suitable to proceed for hearing as a defended cause for one day in Nairobi. Both the Petitioner and the Respondent testified at the hearing and each reiterated what they had set out in the Petition and answer to petition respectively.

8. The Petitioner prays that the marriage celebrated between him and the Respondent be dissolved. He confirms that this Petition has not been presented or prosecuted in collusion with the Respondent, neither has he connived in, or condoned the acts of adultery, cruelty nor desertion complained of in the petition. He also certifies that there have been no previous proceedings filed regarding the marriage. The Respondent on the other hand opposes the petition on account of the health condition and advanced ages of the parties. It was her evidence that she was aged sixty-six (66) years and the Petitioner seventy-two (72) years at the time of the hearing. She too confirms that this Petition has not been presented or prosecuted in collusion with the Petitioner.

9. I have considered the pleadings and the evidence tendered in court. The Petitioner tendered no evidence of the alleged adulterous relationships he accused the Respondent of. The alleged friend of the Respondent who fed him the rumours did not come to court to testify. It was admitted that it was the Petitioner who abstained from being sexually intimate with the Respondent. It was also he who moved out of the matrimonial bedroom and subsequently out of the home altogether. The Respondent invited the court to note from her photograph how very young and fetching she was when she met the Petitioner and compare with her present aged and run down state.

10. I have considered the petition and the answer thereto together with the viva voce evidence tendered in court. I find that none of the allegations of adultery, cruelty and desertion have been proved against the Respondent by the Petitioner. In my view the Petitioner is the author of his own misfortune on all the grounds he has pleaded. The Respondent still professes her love for him and is willing to look after him in his old age. Her desire is to have another old person beside her so that they can face their sunset years together. Her dramatic plea to the court is not to allow the Petitioner who had "chewed her up to spit her out like sugar cane".

In sum, the grounds of the Petition have not been proved and the petition is therefore dismissed for want of merit.

Costs to the Respondent.

SIGNED DATED and DELIVERED in open court this **12th day of March 2015.**

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L. A. ACHODE

JUDGE