



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO

DIVORCE CAUSE NO.18 OF 2008

G M.....PETITIONER

VERSUS

C M C.....RESPONDENT

JUDGMENT

1. The Petitioner (**G M**) filed a Petition for divorce against the Respondent (**C C R**) on grounds of;
 - (i) **Cruelty.**
 - (ii) **The marriage has irretrievably broken down.**
2. The Respondent filed a Reply to the Petition denying each of the Petitioner's claims. She averred that the Petition did not disclose any reasonable cause of action.
3. When the matter came for hearing, the Petitioner testified and called two witnesses. He stated that he married the Respondent on 25th February, 2000 at the District Commissioner's office Kericho.
4. They lived together at their home in Kapnandet of Kipkoyiang Location. They were blessed with one child **A K**. The Respondent bore another child (daughter) after deserting him. He denied paternity of this child
5. She deserted him in August 2008 and bore the said child in 2009. He stated that the Respondent had all along been cruel to him, some of the instances are:
 - i. *Leaving the Matrimonial home regularly.*
 - ii. *Neglecting her duties as a wife. She refused to cook and wash clothes for him.*
 - iii. *She practised witchcraft and had once found a centipede in her hand bag and herbs at the fire place.*
 - iv. *Deserted the Petitioner since August 2008 to date.*
 - v. *Denying him his conjugal rights. He was not aware when she conceived the child.*
6. All reconciliatory meetings organised by the two clans and family failed. He was left to make a decision. He testified that as a result of the ill treatment by the Respondent, him and his son had developed traumatic stress disorders and high blood pressure.
7. The last straw was when in his absence the Respondent stole his three (3) cows which he has not seen again. She had admitted the stealing during the reconciliatory meetings.
8. PW1 and PW2 are the Petitioner's siblings. They confirmed that the Respondent used to mistreat

- the Petitioner by not cooking for him. That the reconciliatory meetings held to resolve their issues did not bear any fruit.
9. The Respondent gave evidence and called three (3) witnesses. In her testimony she denied the Petitioner's claims and said the Petitioner chased her away on 9th August, 2008 because of cows. It was her testimony that all reconciliatory efforts by her parents were thwarted by the Petitioner who would become violent by throwing stones and arming himself with a panga. She believes there is still hope for this Marriage.
 10. All her three (3) witnesses blamed the Petitioner for the failed reconciliation. DW1 stated that in fact he is the one who had sold the Respondent the cows the Petitioner was claiming to be his.
 11. Both Counsels representing the parties filed written submissions. Mr. Motanya for the Petitioner submitted that the marriage between the two parties had irretrievably broken down the parties having lived separately for over six (6) years. He referred to the cases of:
 - i. *Divorce Cause No.30 of 2013 Nairobi High Court.*
 - ii. *Divorce Cause No. 64 of 2009 Mombasa High Court.*
 - iii. *Divorce Cause No.33 of 2008 Mombasa High Court.*
 - iv. *Divorce Cause No.63 of 2008 Mombasa High Court.*
 - v. *Divorce Cause No.9 of 2006 Nakuru High Court.*
 - vi. *Divorce Cause No.56 of 2007 Mombasa High Court.*
 - vii. *Divorce Cause No.153 of 2009 Nairobi High Court.*
 - viii. *Divorce Cause No.128 of 2010 Nairobi High Court.*
 12. He further submitted that the parties herein could not be forced on each other if they were not both ready to stay together. He referred to **Articles 36 and 45** of the **Constitution**.
 13. M/s Koech for the Respondent in her submissions stated that the Petitioner failed to prove that the marriage in issue ought to be dissolved.
 14. That he failed to prove that the Respondent is guilty of cruelty and/or adultery. She referred to a case but did not submit the same to the court.
 15. The issue for determination is whether the Petitioner has on a balance of probabilities proved that the marriage between the two parties herein cannot be redeemed.
 16. A copy of the Marriage certificate was produced herein when this matter was first heard *ex-parte*. The Petitioner and Respondent were married on 25th February, 2000.
 17. They lived together as husband and wife up to August 2008 when the Respondent left the home or was chased away by the Petitioner. It's not clear if she left on her own volition or she was chased away because each has his/her own version of what happened and none is supported by any independent evidence.
 18. The bottom line is that since August 2008 the two have not lived together as husband and wife. That is a period of six (6) years plus eight (8) months. **Section 66 (b) & (d)** of the **Marriage Act** provides that where spouses have lived apart whether voluntarily or by a decree of the court for a period of at least two (2) years the marriage is deemed to have broken down irretrievably. In this case the parties have lived separately since August 2008, a period of six (6) years and eight (8) months.
 19. There is evidence that several meetings have been held to reconcile the parties in vain. Each party is blaming the other for the failed reconciliatory process. There is no indication from either party or their witnesses that this marriage can be revived.
 20. Marriage is a union between two consenting adult parties who are of the opposite sex (**Article 45**

(2) of the **Constitution**). The Petitioner who was abandoned by the Respondent in 2008 has made it clear that he cannot stay with the Respondent again. On the other hand, the Respondent says she wants to go back to him. The Respondent cannot compel the Petitioner to live with her if he does not want to. Further, this court cannot force these two people to live together when there is no longer trust between them.

21. In the circumstances this court finds that the Petitioner has shown that the marriage between these two parties has irretrievably broken down. The marriage celebrated between the Petitioner and Respondent on 25th February, 2000 at the Office of the Registrar of Marriages Kericho District is dissolved. A *decree nisi* dissolving the marriage is hereby issued. The same to be made absolute after thirty (30) days. Each party to bear his/her own costs.

Dated, signed and delivered in open court this 5th day of June, 2015.

H.I.ONG'UDI

JUDGE

In the presence of

Mr. Motanya for Petitioner-present

N/A for the Respondent

Both parties-present

Kipyegon- court assistant

Interpretation-English/Kipsigis