



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
DIVORCE CAUSE NO.10 OF 2014

R K M - PETITIONER

VERSUS

G M N - RESPONDENT

JUDGMENT

1. The Petition for Divorce of marriage dated **8th April 2014** is brought by one **R K M** as a Petitioner.
2. On 10th day of October 2008 the Respondent herein and the Petitioner entered into a marriage under the **Christian Marriage Act Cap.150 of the Laws of Kenya**.
3. At the time of that marriage both were spinster and bachelor respectively.
4. That after solemnization of that marriage, both husband and wife lived and cohabited in [particulars withheld]village in the County of Kisii.
5. Both were blessed with one issue of marriage, namely, V E now aged 5 years.
6. During the subsistence of that marriage, the Respondent herein treated the Petitioner with utmost cruelty and contempt. Particulars of cruelty were as follows:
 - i. **Abandoning and not attending to the Petitioner's daily needs.**
 - ii. **Looking down upon and despising the Petitioner herein.**
 - iii. **Denying the Petitioner her conjugal rights.**
 - iv. **Failing to embrace and create a conducive environment to the Petitioner to practice her faith and her hand.**
 - v. **Looking at the Petitioner's religious faith.**
 - vi. **Associating with relatives who despise and look down upon the Petitioner herein.**

vii. **Using abusive and/or derogatory words against the Petitioner.**

viii. **Subjecting the Petitioner to loneliness.**

ix. **Physically ejecting the Petitioner from the matrimonial home.**

x. **Failing to heed request to reconcile despite several arbitrations.**

7. On or about November 2011, the Respondent forcefully ejected and ordered the Petitioner out of the matrimonial home, and has since lived separately from the Respondent.

8. The consequently the marriage between the Respondent and the Petitioner has irretrievably broken down and various attempts to reconciliation, has failed in so far as the Respondent has refused and/or failed to disclose his reasons for perpetrating cruelty upon the Petitioner and ejecting her from the matrimonial home at the reconciliation meeting(s).

9. That there are neither pending nor previous proceedings between the Respondent and myself in this court or any other court, concerning the same subject matter.

10. That the Petitioner has not connived and nor condoned the acts of cruelty and desertion perpetuated by the Respondent herein.

11. **REASONS WHEREFORE** the Petitioner humbly prays:

a. **That this marriage between the Respondent and the Petitioner be dissolved and a decree Nisi do issue.**

b. **That the decree Nisi be confirmed within 3 months or such shorter period as the court may deem fit and expedient.**

c. **That custody of the issue of the marriage with the Petitioner be granted to the Petitioner.**

d. **The costs of the proceedings herein be borne by the Respondent.**

e. **That such further and/or other orders be made as the Court may deem fit and expedient.**

12. The RESPONDENT filed an ANSWER TO PETITION in the follows:

1. **In response to paragraph 1 of the Petition, the Respondent says the marriage was not solemnized on the 10th October 2008 as alleged.**

2. **In response to paragraphs 4 – 5, he denies all the particulars of cruelty in *toto* seek strict proof thereof.**

3. **The Respondent avers that they have never been blessed with the issue of marriage by name V E and seeks strict proof thereof.**

4. **The Respondent denies the contents of paragraph 6 of the Petition and instead avers it is the Petitioner who unceremoniously walked out of the matrimonial home after the discovery of her acts of immorality.**

5. **The Respondent admits part of the contents of paragraph 7 of the Petition in that the marriage has irretrievably broken down it is the Petitioner who has failed to disclose her reasons for perpetrating her acts of unfaithfulness and deserting the matrimonial home.**

6. **The Respondent in further response to the contents of paragraph 7 of the Petition, aver if**

there is an issue of desertion since November 2011, it is the Petitioner who has deserted the matrimonial home.

7. The Respondent admits the contents of paragraph 9 of the Petition.

13. THE RESPONDENT'S COUNTER-PETITION in which he says as follows:

13) *The Respondent solemnized their marriage on 12th October 2008 at [particulars withheld] S.D.A Church, that the Respondent deserted the matrimonial home and moved away.*

14) *Since the said solemnization that were not blessed with any issue of the marriage.*

15) *That at the time of the solemnization of the marriage, the counter-petitioner paid 3 herds of cattle worth Ksh.200,000/= and Ksh.60,000/= is cash dowry to 2nd Respondent.*

16) *That the counter-petitioner's claim against the Respondent is for the dissolution of the marriage, refund of the aforesaid dowry plus costs and interests.*

17) *The counter-petitioner avers that there has been no proceeding between him and the Respondent in this court or in any other court in respect of the same cause of action.*

REASONS WHEREOF the Petition be dismissed with costs and judgment entered against the Respondent both jointly and severally for:-

- a. *Dissolution of marriage and refund of dowry in the sum of Ksh.260,000/=.*
- b. *Costs of the cause.*

14. THE PETITIONER'S EVIDENCE:

The Petitioner, **R K M** as PW1 stated that she entered into a marriage with one **G M N** on 12th October 2008 in [particulars withheld] S.D.A Church. That they were blessed with issue of marriage; **V E** now aged 7 years. But the marriage was not working and since 2011 we have not lived together. The major obstacle was the denial of conjugal rights and exhibited cruelty and abusive behavior. This went on for three years that we co-habited so I bring this petition to have this marriage dissolved.

Under cross-examination, the Petitioner was insistent that the marriage does not work and no reconciliation will work.

PW2 M M, the father of the Petitioner said that her daughter's marriage was not working. That her husband does not respect her and she lives the life of a prisoner, as she is restricted and has no freedom, she is not even free to eat what she wants. "We tried reconciliation. It did not work. So the marriage is not working. It is better if it is dissolved. I therefore support her prayer for dissolution of this marriage."

In cross-examination, the father said her daughter has been denied food and is not even respected in the home.

15. THE RESPONDENT'S EVIDENCE:

DW1 – G N, the husband married his **R K** on 12th October 2008. He said after marriage all was well until when he discovered that his wife was unfaithful to him, about 2010 to 2011. She had many boyfriends. "When she knew I knew, she walked out of this marriage. I paid dowry, three cows worth Ksh.200,000/= and cash of Ksh.60,000/= thus the total dowry payment was Ksh.260,000/=. The marriage, I admit, has broken down."

On cross-examination by the Petitioner, DW1 admitted that there were two cows, the third was being expected. I ask for dissolution of marriage and refund of dowry.

DW2 – E N M, is the father of G N. He confirmed that his son married R K. After sometime, disagreement arose. “It prompted me to call the two families together to solve the matter. We were unable to do so.” He confirmed the dowry of three cows and two goats and the cash of Ksh.50,000/= and put the total value as Ksh.200,000/= inclusive of cash. However, under cross-examination, he said each cow cost Ksh.50,000/=. He said he is the one who bought the cows.

16.ISSUES FOR DETERMINATION:

- I. Whether the marriage between the Petitioner and the Respondent has irretrievably broken down and should therefore be dissolved and
- II. Whether the Respondent (*as put in his counter petition*) is entitled to the refund of dowry from the Petitioner,

17.Both parties, Petitioner and the Respondent filed their respective written submissions. The Respondent filed his on 27th April 2015 and the Petitioner filed on 23rd March 2015. In both submissions, they both agree that the marriage has irretrievably broken down.

18.ANALYSIS OF THE EVIDENCE & FINDING:

This court has carefully considered the Petition as filed and the evidence adduced by the Petitioner. The Petitioner and the Respondent solemnized their marriage at [particulars withheld] SDA church on the 12th October 2008 under the **Marriage Act, Cap. 150 of the Laws of Kenya.**

19.The grounds for dissolution of marriage are stipulated under **Section 8 (i) of the Matrimonial Causes Act** thus:

“A petition for divorce may be presented to the court either by the husband or the wife on the ground that the respondent:-

- a. **Has since the celebration of marriage committed adultery; or**
- b. **Has deserted the Petitioner without cause for a period of at least three years immediately preceding the presentation of the Petition, or**
- c. **Has since the Petitioner with cruelty; or**
- d. **Is incurably of unsound mind and has been continuously under care and treatment for a period of at least five years immediately preceding the presentation of the Petition and by the wife on the grounds that her husband has since the celebration of the marriage been guilty of rape, sodomy or bestially.”**

20.It is alleged by the Petitioner that since the celebration of the marriage to the Respondent she been treated with cruelty, denied conjugal rights and has generally been in abusive marriage. On the other hand the Respondent alleges that the Petitioner left home and she discovered that the Respondent knew of her being unfaithful to him with litany of other men friends.

21.If denial of conjugal rights to a spouse can be construed as anything, it is cruelty. And if unfaithfulness of a spouse can be construed as anything, it is also cruelty to the one being faithful.

22.This court is therefore convinced that the marriage herein has broken down irretrievably. There is nothing to salvage. In the circumstances, I hereby pronounce a decree of divorce and order that the marriage solemnized on 12th October 2008 between, the Petitioner – R K and the Respondent, G M N, be and is hereby dissolved. The Decree Nisi shall issue forthwith and the same shall be made absolute after expiry of a period of 30 days from the date hereof. I have read the authority of Divorce Cause No.3 of 2011.

23. On the issue of refund of the dowry, DW2 confirmed that he took the dowry. However, it is not clear whether or not there were three cows, two live, one unborn. It is also not clear, whether the cows were grade cows or native cows.

The court concludes that the cows were two at the value of Ksh.40,000/= each and cash value of Ksh.50,000/=. Therefore the Petitioner's father is hereby ordered to refund Ksh.130,000/= to the Respondent as dowry.

24. No order as to costs.

25. It is so ordered.

Dated, signed and delivered in open court this 10th day of July, 2015

HON. C. B. NAGILLAH

JUDGE

In the presence of:

.....for the Petitioner

.....for the Respondent

Samuel Omuga: court clerk