

REPUBLIC OF KENYA

IN THE HIGH COURT AT MALINDI

DIVORCE NO.6 OF 2014

F SAPPLICANT

VRS

E Z.....RESPONDENT

JUDGMENT

The petition dated 15/4/2014 is seeking dissolution of the marriage between the parties herein. The respondent filed a cross petition also seeking dissolution of the marriage, while the petitioner is pleading cruelty, the respondent's cross petition is based on desertion.

The petitioner's evidence is that the two got married on 10/3/2004 before the Registrar of Marriages in Nairobi. They were not blessed with any child. The petitioner had a still birth in 2007. The respondent was previously working with the United Nations but has since retired. At one time the parties stayed in Switzerland and Spain. It is the petitioner's evidence that the respondent has not introduced her to any of his relatives. Only recently, the respondent's niece visited them and she was not aware that the two were married. The respondent has only visited the petitioner's rural home twice.

It is the petitioner's contention that the respondent uses abusive language against her. The respondent calls her a bitch and that he would kick her to the streets where he found her yet that is not true. The petitioner is now 35 years and has no child. The respondent has refused to sire a child and has denied her, her conjugal rights. The respondent has even moved out of the bedroom. The petitioner was affected by the cold weather in Europe and opted to return to Kenya. She developed severe chest pains. The respondent tried to obtain a resident permit in Kenya.

On his part, the respondent testified that after their marriage in 2004, he went back to work in Spain. He obtained a residence card for the petitioner and she joined him in Spain in August 2004. One year later the petitioner returned to Kenya. She returned to Spain for six months only in 2009. In between 2005 to 2009 the respondent used to travel to Kenya several times. It is his evidence that they were living fairly well during the marriage with the normal misunderstandings expected in a marriage. He tried to save the marriage but is of the view that cannot be saved. His family is small. He has a son who lives in Scatle, America and a sister who lives in Buenos Airis, Argentina where he was born. At times the petitioner has been hostile. Some of the petitioner's relatives have lived with them in Malindi. He expected children to come naturally and denied that he refused to sire a child.

It is evident from the evidence of the parties here that there is no love between them. The grounds for divorce may not be quite strong but the court cannot force the two to live together against their will. The differences can be resolved but each party is determined to have the marriage dissolved and start life afresh. The allegations by the petitioner that she has been denied conjugal rights could be true and is sufficient to grant a divorce. The petitioner feels that the respondent does not value her. In her petition, she states that she has lost all the love and desire for the petitioner. Both parties have categorically stated in their respective pleadings that the marriage is irreconcilable and has irretrievable broken down.

Given the evidence herein, I do find that the petitioner has proved her contention that the marriage needs to be dissolved. Equally, I do find that the respondent has proved his cross petition that the marriage is beyond reconciliation. I do order that the marriage between the parties herein be dissolved. A decree nisi to issue.

The petitioner has been enjoying alimony during the pendency of this suit. However, since the parties are no longer going to live as a couple, It would be unjust to order the respondent to continue providing for the petitioner. I do order that the alimony being paid to the petitioner to continue for a period of the next three (3) months hereof and to end by 1st November, 2015. Each party to meet their own costs.

Dated, signed and delivered at Malindi this 3rd day of September, 2015.

SAID J. CHITEMBWE

JUDGE