



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 87 OF 2014

E A APETITIONER

VERSUS

L O O.....RESPONDENT

JUDGMENT

1. The Petitioner has filed a petition dated 25th April 2014 seeking the dissolution of her marriage to the respondent. The petitioner avers that she got married to the respondent a Burundian national on 19th June 1999 at [Particulars Withheld] in Nairobi however the marriage certificate was in the custody of her husband and she had no copy. She and the respondent cohabited at Mkuru Kwa Reuben until March 2011. She avers that they were blessed with 4 issues C O 17 years, J A 15 years, P A 10 years and S O 6 years. That the respondent changed his names from L N and obtained a Kenyan passport. That after the celebration of the said marriage the respondent learnt that the respondent had separated and abandoned two wives and his siblings. After the birth of the 1st issue, the respondent became arrogant and cruel taunting her that he got her while pregnant and started discriminating against the 1st issue. When the petitioner started her dressmaking business, the respondent quit his job and abandoned his responsibilities to provide for the family. That she obtained loans from her merry go round and put up structures at Mukuru kwa Reuben but the respondent sold his at Kshs. 80,000/- and that she continues to pay school fees for the issues of the marriage and has continued to use the children from the 1st and 2nd marriage to invade her which forced her to abandon her matrimonial home and that as she suspected him of being behind the minors death whose x-ray report showed that he was hit on the head with a blunt object.

2. She particularized some of cruelty as follows; Sexual intimidation in front of the minors, death of the minor born out of wedlock under the respondent care, under mysterious circumstances a matter she reported at industrial police station and that the respondent has attempted to hire thugs to eliminate her and even tried to persuade the minor C, to stab her and had continued to interfere with her business with intention of frustrating her by confiscating her sewing machines and alleging that he contributed to their purchase claiming that he stood to inherit all her belonging upon her demise.

3. She particularized adultery as; that the respondent had numerous extra marital affairs with women known and unknown to her causing her unbearable pain and agony.

4. She prays that the respondent be ordered to surrender the marriage certificate before court and that her marriage between her and the respondent be dissolve further that the respondent be restrained from endangering the life of the petitioner pending the determination of this petition.

5. The respondent in reply to the said petition filed an answer and cross petition dated 19 June 2014. He denied all the allegations by the respondents adding that he took care of all the children's basic needs

including but not limited to education, shelter and clothing. He further denied the petitioners claims of adultery and cruelty. He added that he resigned from his job to heed God's call to serve him and even enrolled in a pastoral course.

6. In his cross petition he avers that the petitioner since 2009 has treated the marriage with contempt and has continuously treated the respondent with cruelty which has lead the parties marriage to irretrievably break down and all efforts to reconcile the parties has been futile. Reasons he seeks for the dissolution of his marriage to the petitioner and seeks that the court divides the matrimonial property acquired by them. On his part, the respondent on his cross petition raised grounds of cruelty and desertion.

7. He particularized cruelty as; the petitioner has continuously denied him his conjugal rights causing him mental, physical, and psychological torture. That the petitioner has peddled false accusations that he caused the death of the minor E O and also hurled insults and assaults on the respondent in public.

8. On desertion, he avers that the respondent deserted the matrimonial home in 2011 leaving the respondent to take care of the children of the marriage and since then has not returned.

9. The divorce cause came up for hearing on 23/7/2015. The petitioner reiterated the averments in her petition. She avers that the respondent did not assist her with the house expenses and she had to pay fees for the children, which made her carry a huge burden. That the respondent had lied to her that he was Tanzanian but never took her to his home.

10. The respondent in his testimony denied the allegations made by the petitioner. He however confirms that he married the petitioner while she was pregnant with another man's child. That they purchased a plot and built a permanent house and that he paid dowry after the petitioner's father died. He testified that the petitioner left the matrimonial home and the children of the marriage under his care and later on even tried to separate him from his children and she beat them when they refused to do so. He added that he was a pastor and the money he got he bought the respondent machines for her business and when it became a lot the respondent borrowed a loan and they built on their plot.

11. The petitioner narrated incidents of cruelty and adultery during their marriage. Cruelty and adultery are grounds provided for under the Marriage Act 2014. The petitioner alleges that the respondent has threatened her life and that he was responsible for the death of the minor these allegations are quite serious but I find that there is no evidence to prove the same. The petitioner alleges that the respondent discriminated upon the child born out of wedlock this I find constitutes cruelty against the respondent. On the issue of adultery, I find that the petitioner has made mere allegations and has not adduced any tangible evidence to prove the save. As such, I find the petitioner's petition only succeeds on one ground of cruelty. The respondent on his part has raised a cross petition on grounds of cruelty and desertion. It is not in dispute that the petitioner abandoned her matrimonial home sometime in 2011 a claim that the petitioner does not dispute though she alleges she did so for her own safety and has never gone back this is prove enough that the petitioner is guilty of desertion. The petitioner when she deserted her matrimonial home she denied the respondent his conjugal rights this I find constituted cruelty. As such, I find that the respondent's cross petition succeeds on grounds of cruelty and desertion and allow the same. From the averments by the parties the marriage between the parties has irretrievably broken down and as such I order that the marriage cerebrated between L O and E A on 19th June 1999 be dissolved. The respondent has sought to have the matrimonial property acquired during the subsistence of the marriage to be divided between the parties. I find the parties need to make the relevant application for the same as it cannot be entertained at this juncture. A decree *nisi* to issue and to be made absolute in 30 days. Each party to bear their own costs.

Dated, Signed and delivered this 9th Day of **October** 2015.

R. E. OUGO

JUDGE

In the presence of:

.....**Petitioner**

.....**Respondent**

.....**Court Clerk**