

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MALINDI

DIVORCE CAUSE NO.4 OF 2005

S K.....PETITIONER

VRS

R W K.....RESPONDENT

JUDGMENT

The petition dated 2nd March, 2005 seeks the dissolution of the marriage between the parties herein. The respondent filed a reply and a cross petition dated 21st March 2005 also seeking the dissolution of the marriage. From the time the petition was filed, the divorce case was kept aside and parties dealt with the issue of alimony.

The petitioner's evidence is that the two got married in July 2001 at the District Commissioner's Office. They were blessed with one daughter aged twelve years. He filed the petition as the respondent was abusing him and accusing him of being a criminal. The parties live in the same house but on separate floors. He is 75 years old and sickly. He is the one taking care of the child.

The respondent also asked for the divorce. The child is in boarding school and when she is on holidays she stays with the respondent. The respondent testified that they got married on 13th July 2001. They were blessed with a baby girl. She too would like the marriage to be dissolved. According to her, the petitioner is violent and became a drunkard. At times, the petitioner goes to their matrimonial home accompanied by women. He would drink at the house bar with women. He lives upstairs while she lives downstairs with the child. Each cooks his/her own food and for all purposes lives separately. They have lived like that since 2005. It is the respondent's evidence that the petitioner has assaulted her on several occasions and reports have been made to the police.

The petitioner in his petition contends that he had been denied conjugal rights for two years before the petition was filed. On her part, the respondent accuses the petitioner of adultery and that he at times takes women to their matrimonial home. The answer to the petition gives details of the allegations of adultery and a name of one Esther is given.

From the evidence on record, it is clear that the marriage between the parties has hit rock bottom. It is only the matrimonial house which keeps the parties together. Since 2005, parties have been living separately as if they are not married. Each party would like to start his/her life afresh. There is no hope of reconciliation. I do find that each party has proved his/her claim. The marriage has irretrievably broken down with no hope of sustaining it. There is no love between the two.

In the end, I do find that the petition and cross petition have been proved. The marriage between the parties herein is hereby dissolved. A decree *nisi* to issue. Each party to meet their own costs.

Dated, signed and delivered at Malindi this 8th day of October, 2015.

SAID J. CHITEMBWE

JUDGE