



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA

FAMILY DIVISION

DIVORCE CAUSE NO. 43 OF 2013

J K M.....PETITIONER

VERSUS

S M J.....RESPONDENT

JUDGMENT

1. The Petitioner **J K M** has filed this petition dated 19.6.13 seeking the dissolution of her marriage to the Respondent **S M J**. The Respondent filed both an Appearance and an Answer to Petition.
2. The ground for divorce as set out in the Petition is cruelty, the particulars whereof are that since 2011, the Respondent had neglected failed to show any warmth, affection or towards the Petitioner and had further failed to financially provide for the Petitioner; that the Respondent had humiliated the Petitioner in the presence of her family and friends by falsely accusing the Petitioner of adultery; that the foregoing conduct by the Respondent had caused her mental, psychological and emotional anguish; She further avers that all efforts at reconciliation had failed and that the marriage had irretrievably broken down.
3. The Respondent in his Answer to Petition denies the allegations by the Petitioner and accuses the Petitioner of cruelty and adultery; that she had denied him his conjugal rights and had had several extramarital affairs with different men including her boss. The Respondent however states in spite of this conduct, he still he loved the Petitioner and believed that the marriage could be salvaged with counselling and guidance. He prayed that the Petition be dismissed with costs
4. At the hearing, the Petitioner testified that she and the Respondent got married on 19.12.2009 at the ACK Memorial Cathedral, Mombasa. Following their marriage, they cohabited in Bamburi; that they were not blessed with any children. She further testified that initially their relationship was good until the Respondent changed. He stopped showing her any warmth or respect; that they both worked at the same company and that he would not recognize her as his wife at office functions but would keep the company of other women; that the Respondent made no financial contribution in the management of the home and left that to the Petitioner; that he would in the presence of colleagues and the Petitioner's mother accuse her of having adulterous relationships with her bosses. She further contends that due to the Respondent's conduct, she moved out of her matrimonial bed and to her mother's home in January 2013 and thereafter to Germany in April 2013; that they have been separated since then and she no longer has any love for the Respondent and the marriage has irretrievably broken down. In cross examination, the Petitioner stated that she met somebody else in 2012 but that at that time the Respondent already had someone else in his life with whom he had a child.

5. The Respondent on his part denied that he was cruel to the Petitioner. He stated that the Petitioner kept many things from him; that she refused to go for HIV test as required by the Church prior to marriage. They therefore had to use protection when having sex during the three years of their cohabitation and that is why they never had any children. He accused the Petitioner of adultery with one Stephan, a colleague of the Respondent, in Switzerland. He discovered this through email and skype between the Petitioner and the said Stephan. That in 2012, the Petitioner went to Switzerland claiming she had gone to take care of her sick aunt and did not communicate with the Respondent throughout her stay there; that upon her return, she did not go back to the matrimonial home except to collect her car and clothes. The Respondent further testifies that in April 2013 he sent her an email asking her to come back but she told him she could not as she had been unfaithful. He stated that though he initially had hope for the marriage, he had now come to accept the reality that the marriage was beyond salvage. He further stated that the marriage between him and the Petitioner was behind him and that he had met somebody else. He blamed the Petitioner for the breakdown in the marriage.
6. I have considered the Petition and the testimony of both the Petitioner and the Respondent. The Petitioner met and married the Respondent at the ACK Mombasa Memorial Cathedral in Mombasa on 19.12.09. The marriage certificate serial number [particulars withheld] is sufficient proof of the fact of the marriage. Both the Petitioner and the Respondent testified in Court and each was keen on proving the other as the cause of the break down in the marriage.
7. The Marriage Act, 2014 at Section 66(2) provides for the grounds upon which a civil marriage may be dissolved. These include:
 - a. **adultery by the other spouse;**
 - b. **cruelty by the other spouse;**
 - c. **exceptional depravity by the other spouse;**
 - d. **desertion by the other spouse for at least three years; or**
 - e. **the irretrievable breakdown of the marriage”**
8. In her Petition and in her evidence the petitioner cites the grounds of cruelty while the Respondent accused the Petitioner of cruelty and adultery.
9. On the ground of cruelty, it is clear from the evidence that both parties were cruel to each other. Their conduct as set out above was such that caused both parties mental, emotional and psychological anguish. I am satisfied that this ground has been proven.
10. The ground of adultery alleged by the Respondent in his answer to Petition has been proved by the email exchanges between the Petitioner and the Respondent produced in Court, wherein the Petitioner admitted to being unfaithful and sought the Respondent's forgiveness. Although the Petitioner did not allege adultery as a ground in her Petition, it is clear that the Respondent has himself been guilty of the same. He admitted in his testimony before Court that he had found somebody else. This is even as the marriage is still subsisting.
11. It is clear from the foregoing that the marriage herein has irretrievably broken down. Neither of the parties is interested in the same. Accordingly, I pronounce a decree of divorce and order that the marriage solemnised at the ACK Mombasa Memorial Cathedral in Mombasa on 19.12.09 be and is hereby dissolved. Decree *nisi* to issue and the same to be made absolute within 3 months.
12. Each party shall bear its own costs.

DATED, SIGNED and DELIVERED in MOMBASA THIS 3RD DAY OF DECEMBER, 2015.

M. THANDE

JUDGE

In the presence of: -

..... **for the Applicant**

..... **Court Assistant**