



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA

FAMILY DIVISION

DIVORCE CAUSE NO. 62 OF 2014

V A RPETITIONER

VERSUS

M N ARESPONDENT

JUDGMENT

1. The petitioner **V A R** has filed this petition dated 24.9.14 seeking the dissolution of her marriage to the Respondent **N A** . The Respondent filed both an appearance and an Answer to Petition.
2. The grounds for divorce as set out in the Petition are cruelty desertion. The Petitioner avers since the celebration of the marriage, the Respondent has been guilty of wilful neglect of the Petitioner, has been unavailable to give her the care, attention and understanding. He has also lacked commitment to the marriage and has denied the Petitioner her conjugal rights. That the Respondent deserted the matrimonial home in 2008 never to return.
3. The Respondent in his Answer to Petition denies the allegations by the Petitioner. He admits the fact of non-cohabitation but claims the same was occasioned by the Petitioner and not by himself. He accused the Petitioner of cruelty and adultery. He alleged that the Petitioner subjected him to verbal abuse in the presence of his children and relatives; that she also physically assaulted his children in his absence. He further alleged that the Petitioner denied him conjugal rights and had an adulterous relationship with one Bernard, cohabited with him and even had two children with him during the subsistence of the marriage. He further stated that the couple had acquired property together and that he would be applying for division of the same.
4. Although the hearing date of 17.9.15 for the Petition was taken by consent, the Respondent did not make an appearance. The Petitioner testified that she and the Respondent got married on 21.4.05 at the Registrar's Office in Mombasa and were issued with marriage certificate. Following their marriage, the Respondent moved in with the Petitioner in her two bedroomed house in Tudor, Mombasa with his two children from a previous relationship. Given that the Petitioner also had a child from a previous relationship, the Petitioner looked for a bigger house that could accommodate them all; that the Respondent made no effort to do so.
5. The Petitioner further testified that shortly after the marriage, the Respondent left for Liberia where he was working and returned two months later; that she discovered during their cohabitation that the Respondent was a habitual drunkard and he became verbally abusive; that he was an insecure bully who would abuse and threaten any man who approached her including her drivers; that towards the end of 2008 the Respondent deserted the matrimonial home never to

return. The Petitioner therefore prays for the dissolution of the marriage as all efforts at reconciliation have been fruitless. She denies that she and the Respondent acquired any property together.

6. I have considered the Petition and the uncontroverted testimony of the Petitioner. The petitioner met and married the Respondent on 21.4.05 at the Registrar's Office in Mombasa. The certified copy of marriage certificate serial number 005625 is sufficient proof of the fact of the marriage. As stated earlier, the Respondent did not make an appearance on the hearing date. It was therefore not possible to prove the veracity of the allegations contained in his Answer to Petition. As stated earlier, the Respondent did not make an appearance on the hearing date. It was therefore not possible to prove the veracity of his allegations.

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 and desertion.

9. On the ground of cruelty, the Petitioner testified that the Respondent verbally abused her calling her a prostitute; that he would call her mother and siblings and tell them that the Petitioner was a prostitute; that he would constantly stalk her whenever she was on personal errands and would threaten her drivers; that he denied her conjugal rights and had no love for her; that he was a habitual drunkard and an insecure bully who did not provide for her but left her to singlehandedly take care of the matrimonial home and of his children. I am satisfied that this ground has been proven.

10. On the ground of desertion, the Petitioner told the Court that the Respondent left the matrimonial home in 2008 never to return. I find that this his ground has been proved as it has been seven years since the Respondent deserted the Petitioner. The law requires that desertion be for a period of at least three years.

11. The ground of adultery alleged by the Respondent in his answer to Petition has been proved albeit unwittingly, by the Petitioner herself. She admitted that she had two children during the subsistence of the marriage. Her attempted justification that the children were conceived after the Respondent deserted her in 2008 does not hold water as the marriage was and is still subsisting.

12. 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 Registrar of Marriages Office in Mombasa on 21.4.05 be and is hereby dissolved. Decree *nisi* to issue and the same to be made absolute within 3 months.

13. Costs shall be in the cause.

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

M. THANDE

JUDGE

In the presence of: -

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

..... **Court Assistant**