

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

DIVORCE CAUSE NO. 24 OF 2013

A A R PETITIONER

VERSUS

R R R RESPONDENT

JUDGMENT

By this petition dated 18th April 2013 filed in court on 2nd May 2013 the Petitioner **A A R** seeks the following prayers:

“(a) THAT the marriage between your petitioner and the Respondent be dissolved and a Decree Nisi be issued.

(b) THAT each party to bear their own costs of this cause”

The Respondent **R R R** was duly served with the petition and summons. She failed to either enter appearance or to file a response to the petition. The matter therefore proceeded as an undefended cause.

In his evidence the Petitioner told the court that he is currently a musician working at the Serena Beach Hotel in Kigali Rwanda. He further testified that he married the Respondent on 31st January 1972 in the Registrar’s office in Mombasa. He produces a copy of the Marriage Certificate Serial No. [Particulars Withheld] as proof of this fact **Pexb1**. After the marriage the couple cohabited as man and wife in Ganjoni, Tudor and Nyali in Mombasa. They bore one daughter together who is now an adult aged 31 years and lives in London, United Kingdom. The Petitioner states that the marriage was not a happy one as the couple had several differences. They only stayed together for the sake of the child. For 28 years they occupied separate bed-rooms. From the year 2008 the couple have lived separately. The Petitioner now seeks a dissolution of the marriage.

In this case there has been no evidence to challenge the testimony of the Petitioner. Section 8 of the Matrimonial Causes Act provides the ground upon which a divorce may be granted. Section 8 is basically a ‘*fault*’ clause which asks the court to find either spouse ‘*guilty*’ of a matrimonial offence leading to the divorce. This is a case where it appears the parties had problems throughout the marriage and only stayed together for the sake of their child. The said child is now 31 years old and is an independent adult. The couple occupied separate bedrooms for most of their marriage (28 years) and since 2008 have lived separately – that is a period of six (6) years. What exists here is not a vibrant marital union but a mere shell of a marriage. The fact that the Respondent did not bother to reply to the petition is a pointer that she has no wish to remain tied to the Petitioner. All efforts at reconciliation have failed. It serves no useful purpose to compel the couple to remain tied together in matrimonial bonds when clearly they desire otherwise. I therefore allow this petition for divorce. Decree nisi to issue to be made absolute within three (3) months of today’s date. No order on costs.

Dated and delivered in Mombasa this 13th day of February 2014.

M. ODERO

JUDGE