

IN THE HIGH COURT OF KENYA

AT MOMBASA

DIVORCE CAUSE NO. 23 OF 2013

W I PETITIONER

=VERSUS=

1. P G H

2. K RESPONDENTS

JUDGEMENT

The Petitioner **WI** filed this petition dated 19th April 2013 seeking the dissolution of his marriage to the Respondent **P G H**. One **K** (no last name given) was named as a Co-respondent. Both the Respondent and the Co-respondent were served with the petition and a summons but neither filed any papers in this matter. The case then proceeded for formal proof.

The Petitioner in his evidence told the court that he is a retiree of German Nationality. He met and married the Respondent on 3rd June 2008 in Switzerland. The copy of Marriage Certificate is proof of this fact. The couple moved back to Kenya where they cohabited in Ukunda in the South Coast. The couple bore no children together although the Respondent came into the marriage with two (2) children whom the Petitioner accepted to raise as his foster children.

The Petitioner told the court that in February 2010 he discovered the Respondent was engaging in an extra-marital affair with one 'K' [whom he has named as a Co-respondent in this matter]. This issue brought problems between the couple. The Petitioner confronted the Respondent who promised to break off ties with this 'K' but did not do so. Eventually on 2nd May 2010 the Respondent left the matrimonial home. She then wrote to the Swiss Embassy to inform them that she and the Petitioner no longer lived together and that any 'child pension' being paid for the Petitioner's foster children should be stopped. This was done. In September 2011 the Respondent bore a baby boy fathered by this 'K'. The Petitioner filed this petition seeking divorce as he now wishes to emigrate and settle in South Africa.

Section 6(1) of the Matrimonial Causes Act Cap 152 Laws of Kenya provides:

“6(1) No petition for divorce shall be presented to the court unless at the date of the presentation of the petition three years have passed since the date of the marriage”

In this case the marriage took place in Switzerland in June 2008. This petition was filed in April 2013 a full five (5) years after the said marriage. As such I am satisfied that this petition fulfils the conditions set out in Section 6(1) and is properly before the court.

The grounds upon which a divorce may be granted are set out in Section 8 of Cap 152. These include Adultery provided for by Section 8(a) and desertion which is provided for in Section 8(b). The Petitioner testified that sometime in 2010 he discovered that his wife was engaged in an adulterous affair with the Co-respondent. He confronted her and she promised to break off the affair but failed to do so. The Petitioner's efforts to save his marriage including taking her back to Switzerland bore no fruit as she returned to Kenya and continued with the adultery. The affair culminated in a son born in September 2011. The child being of African descent could not possibly be the child of the Petitioner who is a Caucasian. The evidence of the Petitioner is not challenged. Despite having been properly served neither the Respondent nor the Co-respondent bothered to enter appearance or to file any response to the petition. I have no reason to doubt the veracity of the Petitioner's evidence.

In May 2010 the Respondent deserted the matrimonial home. There has been active desertion for 3 years in terms of Section 8(b). The Respondent even wrote to the Swiss Embassy to inform them that she was no longer living with the Petitioner. This made her intention to abandon the marriage clear. The couple have not cohabited as man and wife since May 2010. All in all there is a clear picture of a marriage which has irretrievably broken down. All that remains is a shell. I am satisfied that both grounds of adultery and desertion have been sufficiently proved. I therefore allow this petition for dissolution of the marriage as prayed. 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 12th day of February 2014.

M. ODERO

JUDGE