



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
DIVORCE CAUSE NO. 3 OF 2010

N S J.....PETITIONER

VERSUS

F N E.....RESPONDENT

JUDGMENT

The petitioner **N S J** filed this petition dated 29th June, 2010 seeking the dissolution of his marriage to the respondent **F N E**. The respondent was duly served with both the petition as well as a summons to appear but she filed no response. The matter therefore proceeded as an undefended cause.

The petitioner testified before me on 25th March, 2014. He stated that he met and married the respondent on 25th June, 1994. At the time the couple both lived in the United Kingdom. A copy of the marriage certificate **Pexb1** provides proof of the fact of this marriage. The couple began their married life in the United Kingdom where they lived until 1997 when they moved to Kenya. Their union was blessed with three daughters namely

- S J - 24 years
- J J - 23 years
- A J - 18 years

In 1998 the couple separated due to disagreements. They reconciled briefly but then separated permanently in 1999. The petitioner states that the respondent would constantly taunt him for failing to give her a son. After their separation in 1999 the respondent proceeded to bear four (4) more children with a different man. As stated earlier the respondent filed no reply to the petition. As such the petitioner's evidence remains unchallenged and uncontroverted. For the respondent to taunt the petitioner about his failure to sire a son amounts to cruelty. The fact that the respondent proceeded to bear children with another man during the subsistence of her marriage to the petitioner is clear evidence of adultery. The new Marriage Act No. 4 of 2014 at part IV section 24 provides that a civil marriage is one which has been celebrated by the Registrar. The parties in this case contracted a civil marriage. Section 66(2) of the same Act provides:

“A party to a marriage under part IV may only petition the court for the separation of the parties or the dissolution of the marriage on the following grounds

- a. **Adultery by the other spouse.**
- b. **Cruelty by the other spouse.**

- c.
- d.
- e. **The irretrievable breakdown of the marriage.”**

As discussed earlier, I have already found that there exists proof of both cruelty and adultery on the part of the respondent. The couple have lived separately since 1999 a period of about fifteen (15) years. This is proof that the marriage has irretrievably broken down. 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 9th day of June, 2014.

M. ODERO

JUDGE

In the presence of:

Mr. Kole for Petitioner

Court Clerk Mutisya