



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
DIVORCE CAUSE NO. 15 OF 2014

J. A. M.....PETITIONER

VERSUS

R. A. O.RESPONDENT

JUDGMENT

1. The Petitioner, J. A. M. filed a petition on 23/1/2014 seeking the marriage between her and the Respondent R. A. O, be dissolved under a divorce decree nisi and absolute be issued. Other prayers include;

The Respondent – he ordered to keep away/off the Petitioner,

The Petitioner is free to marry another man of her choice,

Each Party to bear his/her own costs,

Any other relief that the Court may deem fit and just in the circumstances.

2. The Petitioner averred that she was married to the Respondent on 28th October, 2011 under the Marriage Act Cap 150(repealed). The marriage was blessed with one (1) issue A. S. B. O. a minor.

3. The Petitioner and Respondent having during the subsistence of their marriage resided in Nairobi.

4. The Petitioner served the Respondent with the petition and Notice to Appear. He filed a memorandum of appearance on 31st January, 2014. The affidavit of service was filed on 25th February, 2014.

5. On 25th February, 2014, the Petitioner through counsel applied for the Registrar's certificate of compliance which was granted to proceed as an undefended cause.

6. On 22nd January, 2014, the Petitioner filed an application for leave to file a petition for divorce before three (3) years of marriage leave was granted on 23rd January, 2014.

7. On 22nd May, 2014 the Registrar's certificate was granted and the matter to proceeded as an undefended cause.

8. The Petitioner's Petition for dissolution of marriage is grounded on particulars of cruelty and desertion as outlined and detailed in paragraph 13 of the petition.

9. In a nutshell, immediately after the marriage, the Respondent treated the Petitioner with emotional cruelty he kept off from her and would only talk to her under very compelling circumstances.

10. The Respondent refused to care for the Petitioner cater and provide for food, shelter, clothing and medical expenses and upkeep of the Petitioner and the issue of the marriage. All efforts aimed at reconciliation or creating some understanding failed.

11. With regard to desertion, the Petitioner and Respondent only cohabited and consummated their marriage for one (1) week. From then on, the Petitioner has been abandoned and the Respondent made no effort to visit with or cohabit with the Petitioner.

12. The Petitioner has not condoned or connived or in any way been on accessory or colluded in this matter.

13. The Petitioner testified on 18th September, 2014 and reiterated the grounds for dissolution of the marriage between her and the Respondent. She produced the marriage certificate No. 156109 under the Marriage Act Cap150 (repealed).

14. The birth certificate of the child of the marriage was not produced.

15. The passport copy of the Respondent was produced and attached to the Petition bundle on page 10.

16. The Petitioner agreed to the Respondent access to the child of marriage if and when he requests to. The maintenance and custody remains with the Petitioner and is not claiming any contribution or support from Respondent.

17. The Respondent despite service of the petition and entering appearance did not file answer to petition and or cross petition. The allegations and particulars of cruelty and desertion as provided in the petition and alluded to in oral evidence are not controverted by pleadings or testimony from the Respondent.

18. The pleadings and proceedings culminate to the logical and reasonable finding of the Court; the marriage between the Petitioner and Respondent has irretrievably broken down under the now Marriage Act 2014, Section 66 6(b) (c) (d) and (e) of the said Act. The Petitioner has proved on a balance of probability that the Respondent was cruel and deserted her and her child.

19. That the marriage solemnized herein between the Petitioner and the Respondent on 23rd January, 2011 is hereby dissolved.

- a. Decree nisi to issue forth with and
- b. Decree absolute there after within 30 days
- c. The custody, maintenance and upkeep of the child of the marriage remains with the Petitioner; the Respondent is at liberty to access the child of the marriage as conceded by the petitioner.
- d. No orders as to costs.

Read and signed at Nairobi this 10th October, 2014 in open Court in the presence of Counsel for the Petitioner.

M. MUIGAI

JUDGE