



REPUBLIC OF KENYA

IN THE HGIH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO 142 OF 2011

J K K.....PETTIONER

VERSUS

L N M.....RESPONDENT

JUDGMENT

The Petitioner S.K.K and the Respondent L.N.M were married on 27/3/2001, at the Registrar's Office and were issued with the Marriage Certificate No. *[particulars withheld]*. They cohabited in Nairobi and Kikuyu.

The Petitioner and Respondent had 4 issues of the marriage J.M 18 years, V.W 14 years, J.K 12 years and J.G years.

The Petitioner filed the Petition on 29/8/2011 and served the Respondent who filed Answer to Petition on 19/10/2011. The parties obtained the Registrar's Certificate to proceed as a defended Cause on 19/11/2012.

On 25/9/2014, the matter proceeded for hearing, the Petitioner gave oral evidence that he and the Respondent cohabited from 1996 and were married in 2001. The Petitioner stated the Respondent was cruel to him, she was abusive, insulting and disrespectful to him. She left the matrimonial home in 2009 and returned in 2011 and stayed for 1½ years and then took off again and has never returned to the matrimonial home.

On each occasion, he brought in elders and family members to reconcile them. The Respondent would shout and cause commotion in the neighbourhood. It was denied friendships and companionship by the Respondent.

The Respondent in the answer to Petition of 19/10/2014 averred that the Petitioner was cruel to her.

The Petitioner physically assaulted her and for long period he failed to provide sustenance for the Respondent and the children of the marriage.

The Petitioner also used a abusive and insulting language on her.

The Respondent denied leaving the matrimonial home and claimed she went to visit her parent which is normal under customary law. She sought the Petition be dismissed with costs and offer such relief as the court deeme fit.

The court has carefully considered the pleadings and oral evidence on record.

The Petitioner and Respondent have had a total of 14 years marriage of which the Respondent has filed from the matrimonial home twice. Attempts to reconcile the parties failed on the last occasion. Whereas the court's duty is to reconcile parties and maintain a family as a fundamental unit of society as prescribed in Article 45 (1) of the Constitution, the parties herein have separated since 2011 and there is no likelihood of contact and/or reconciliation. This court cannot force them to stay together but accede to their wishes based of the circumstances of the case and grounds of divorce.

Article 66 of the Marriage Act of 2013/2014 outlines the ground for divorce, among them cruelty and irretrievably broken down marriage. In the instant case, cruelty is broad concept but includes with physical and mental anguish. The Petitioner in the particulars of cruelty in paragraph 6 of the Petition has outlined the instance of cruelty by the Respondent and also confirmed the same through oral evidence whose vivacity was tested by oral examination by the Respondent's Counsel.

On the other hand, the Respondent also outlined grounds of cruelty in paragraph 4 of Answer to the petition. However, the allegations have not been proved by evidence adduced in court and therefore the pleadings remain as allegations. The Respondent's case is not proved on a balance of probability.

The Petition of the Petitioner is upheld as he was found his case on balance of probability and therefore the court grants divorce.

The Petitioner and Respondent have 4 children of marriage. From the court record issues of the children were canvassed in Children Cause 604 of 2012 and the matter was settled in so far as the court is concerned with regard to the children of the marriage.

The Court therefore orders;

- a. The marriage between the Petitioner and Respondent of 27th March, 2001 is dissolved.
- b. Decree nisi to issue forthwith.
- c. Decree absolute to issue with 30 days.
- d. No application for maintenance parties are at liberty to agree or apply in court.
- e. No orders as to costs.

READ AND SIGNED AT NAIROBI THIS 14TH DAY OF NOVEMBER, 2014.

M. MUIGAI

JUDGE