



REPUBLIC OF KENYA

IN THE HGIH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 37 OF 1997

A.M.N.....PETTIONER

VERSUS

W.M.N.....RESPONDENT

JUDGMENT

The Petitioner and Respondent solemnized their marriage on 2nd June, 1972 Bomani AIC Church Machakos as evidenced by the Marriage Certificate No. **[particulars withheld]** vide the **African Christian Marriage & Divorce Act Cap151 (repealed)**. They cohabited in Kibwezi and Nairobi and had four (4) children (now adults) of the marriage.

The Petitioner filed the petition on 26th March, 1997 and the Respondent filed Answer to petition and Cross Petition on 19th May, 1997. The Petitioner field the Answer to Cross Petition on 4th June, 1997. The hearing of the petition was on 23rd October, 2014 the Respondent was duly served and an affidavit of service field on 23rd October, 2014.

The Petitioner told the Court in her testimony that the Respondent treated her with cruelty through physical assault, verbal abuse and insults and eviction from the matrimonial home of her and the children of the marriage in 1996 from Kariokor Estate House Number **[particulars withheld]**.

The Respondent wilfully neglected to maintain and support the family until she obtained gainful employment and was able to take care of the children and provide for the education. The Respondent also practised witchcraft and was involved in extramarital affairs. All these acts of cruelty and adultery culminated in causing the Petitioner mental and psychological anguish.

The Respondent in answer to the petition and Cross Petition denied allegations of cruelty and adultery and attributed to her similar circumstances of cruelty and adultery in paragraph 8 and 9 of the Cross Petition. However the Respondent did not attend Court and provide oral testimony and be subjected to cross examination.

From the evidence on record this Court is called to determine the question of divorce and dissolution of the marriage between the Petitioner and Respondent due to the evidence adduced and pleading filed.

The Court has considered carefully the evidence in record and the pleadings filed by the Petitioner and the Respondent. the grounds of divorce are contained in the **Marriage Act of 2014** which repealed the **African Christian Marriage and Divorce Act Cap 151 (repealed) Section 65 of the Marriage Act 2014** on dissolution of a Christian Marriage is on the ground of adultery committed by the other party, acts of cruelty whether mental of physical inflicted by the other party on the Petitioner or on the children,

desertion by the other party for at least 3 years, exceptional depravity or the irretrievably breaking down of the marriage.

The Petitioner has in her testimony alluded to instances of cruelty and adultery which were not controverted by Respondent's testimony and no evidence was adduced by the Respondent. On a balance of probability the Petitioner has established her case.

The Answer to the petition and Cross petition were not backed by oral evidence and cross examination to test its veracity. The upshot of the evidence is that both Petitioner and Respondent committed acts of cruelty to each other and made the marriage irretrievably break due to the physical eviction of Petitioner and the children of the marriage from the matrimonial home in 1996.

The Petitioner and Respondent have separated for 18 years, and seemingly each of the parties has moved on with their lives in separate ways. The marriage has duly broken down and there is very little to salvage in the marriage. These acts deponed one clearly grounds of divorce envisaged in **Section 65 of the Marriage Act**.

Therefore Court can only give effect to the wishes of the Petitioner and Respondent as allowed by law and based on the evidence on record as follows;

1. The marriage between the Petitioner and Respondent solemnized on 3rd June, 1972 is hereby dissolved
2. A decree nisi to issue forthwith and decree absolute in 6 months.
3. The children of the marriage are now adults and prayer 2 and 3 of the petition are overtaken by events.
4. The Court will not grant any of the prayers in the Answer to Petition and Cross Petition as no evidence was adduced in Court and was not subjected to cross examination on the same. The Respondents claims remain unproved. The same is dismissed
5. No orders as to costs.

READ AND SIGNED AT NAIROBI THIS 2ND DAY OF DECEMBER, 2014

MARGARET MUIGAI

JUDGE

In the presence of:

Mr. Chebii Holding Brief for MR. Chalenza for the Petitioner.