



REPUBLIC OF KENYA
IN HIGH COURT OF KENYA AT NAIROBI
FAMILY DIVISION
DIVORCE CAUSE NO. 39 OF 2013

M.N.O.....PETITIONER

-VERSUS-

R. B. N.....RESPONDENT

JUDGMENT

1. M. N. O the petitioner filed a petition against the Respondent on the 19th of February 2013. He seeks to have the marriage between him and the Respondent celebrated on 19th of January 2010 be dissolved on grounds of desertion. He claims that since the year 2010 they have been living separately, the petitioner in Australia and the Respondent in Kenya.
2. The Respondent filed an Answer to the petition and a Cross Petition. She denies what has been deponed in the petition she also seeks dissolution of the marriage on grounds of desertion. She claims that the petitioner left the country for Australia on the understanding that he would return after one year and settle permanently in Kenya. She seeks that the petitioner be ordered to pay her reasonable maintenance and that the petitioner be ordered to pay costs of the cause.
3. At the hearing the petitioner M.N.O testified that they got married on the 19th of January 2001 at Sheria House and thereafter he left for Australia where he lives and works; that before their marriage they had spoken of relocation. They discussed and agreed that the Respondent would go and stay with him as he was the only one working. Subsequently they changed her passport and ID card to reflect his last name. He returned in October 2010 and filled the paper work for her. The Respondent did not join him in Australia; that during their entire relationship they stayed together for only 7 weeks. He stated that he did not support her because just before their marriage she got a job. He denied that they had agreed that he would stay in Australia for a year and return. The petitioner stated that their marriage has broken down and that he should not pay her maintenance.
4. The Respondent in her evidence testified that she agreed with the evidence of the petitioner only up to the point that she was to relocate to Australia. According to her he was to return to Kenya after one year. She abandoned her claim for maintenance and only sought costs of changing her documents back to her name.
5. I have considered the evidence adduced. Under the Matrimonial Causes Act Section 8 one of the grounds of divorce is desertion. The petitioner states that the respondent refused to join him in Australia where he resides and works despite his attempts to have the respondent do so she however did not work at it. The respondent denies that that was not the agreement but that he was to return after a year and settle in Kenya. It is the word of one against the other.

6. Section 8 of the Matrimonial Causes Act provides that divorce one of them is desertion by a spouse for at least three (3) years. In this case there has been desertion and separation from October 2010. The marriage between the petitioner and the respondent has irretrievably broken down. They hardly stayed together as man and wife soon after their marriage. There is no likelihood of any reunion, the petitioner lives and works in Australia and the Respondent in Kenya.
7. The parties have not connived or colluded in filing their petitions. I have established through their evidence that there has been desertion and that their marriage has irretrievably broken. I will therefore grant the dissolution of their marriage. The respondent stated that she does not want any maintenance but only wants the petitioner to bear costs of the process of changing her documents back to her names. In my view this is a process she can undertake alone further she has not indicated the cost of the said process and what it involves.
8. Accordingly I hereby dissolve the marriage solemnized on the 19th January 2010 at Sheria House between M. N. O and R.B.N. A Decree *nisi* shall issue forthwith and the same to be made absolute after a period of thirty (30) days from the date hereof. Each party to bears its own cost.

Orders accordingly

Dated signed and delivered this **4th** day of **December** 2014.

R.E. OUGO

JUDGE

In the presence of;-

.....**For the Petitioner**

.....**For the Respondent**

.....**Court Clerk**