

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO.182 OF 2011

V S G.....PETITIONER

VERSUS

B V.....RESPONDENT

J U D G M E N T

The Petitioner and the Respondent were married on 28th February 2011 under the Hindu traditional marriage rites at Himachal Pradesh, India. After the celebration of the marriage, the Petitioner and the Respondent cohabited together as husband and wife in Kolkata India and in Ngara in Nairobi. The marriage has been blessed with two issues, twins, born on 16th March 2002. According to the Petitioner, since the celebration of the marriage, the same has not been a happy one. He complains that the Respondent has treated him with cruelty. He sets out the particulars of cruelty in his petition of divorce. In particular, he alleged that the Respondent had denied him his conjugal rights, was stubborn, rude and anti-social, was ill tempered and exhibited violent tendencies towards the Petitioner. She had also caused mental anguish to the Petitioner. Because of the above behaviour, which according to the Petitioner had persisted for a long time, the Petitioner had formed the view that his marriage to the Respondent had irretrievably broken down with no possibility of salvage. The Petitioner therefore urged the court to grant his petition for divorce, grant him custody of the children and also award him costs of the petition.

The Respondent was duly served with the petition for divorce. She however did not enter appearance. Neither did she file papers in opposition to the petition. During the hearing of the petition, the Respondent was served with the hearing notice to attend court. She failed to attend court. The hearing took place before Mugo J. She heard the testimony of the Petitioner. She reserved the cause for judgment. However, the learned judge was transferred from the Family Division before she could render decision. This matter was mentioned before this court on 2nd May 2013. The court agreed to write the judgment on the basis of the proceedings before Mugo J. This court has carefully read the pleadings filed by the Petitioner in this case. It has also read the proceedings before Mugo J. The issue for determination by this court is whether the Petitioner established a case to enable this court grant the order of divorce that he craves for. When he testified before court, the Petitioner essentially reiterated the contents of the petition. He testified that he had not had sexual intercourse with the Respondent for more than six (6) years. He stated that the Respondent had withheld his conjugal rights without any reason. He also complained that the Respondent was a difficult person who had made his marital life intolerable. She accused the Respondent of harassing him. The Respondent had also refused to have a good relationship with his parents. He complained that the Respondent was a person of ungovernable temper. For these reasons, the Petitioner was of the view that his marriage to the Respondent had irretrievably broken down. The Petitioner told the court that he was taking care of the children of the marriage.

Having carefully evaluated the evidence adduced by the Petitioner, it was clear to this court that indeed the marriage between the Petitioner and the Respondent had irretrievably broken down. A marriage where conjugal rights are not exercised for a period of more than six (6) years is indeed doomed. The testimony of the Petitioner clearly showed that the Petitioner and the Respondent no longer related as husband and wife. The Petitioner feels mistreated. This court is of the view that the Petitioner established the matrimonial offence of cruelty. This court will therefore grant the petition for divorce.

In the premises therefore, the marriage celebrated between the Petitioner and the Respondent on 28th February 2001 at Himachal Pradesh India is hereby dissolved. Decree nisi dissolving the said marriage is

hereby issued. The decree nisi shall be made absolute thirty (30) days from the date of the judgment. As regards the issue of custody and maintenance of the children, the Petitioner shall be at liberty to file an appropriate case before the Children's Court. There shall be no orders as to costs. It is so ordered.

DATED AT NAIROBI THIS 8th DAY OF OCTOBER, 2013

L. KIMARU

JUDGE