



Case Number:	Divorce Cause 51 of 2010
Date Delivered:	08 Oct 2013
Case Class:	Civil
Court:	High Court at Nairobi (Milimani Law Courts)
Case Action:	Judgment
Judge:	Luka Kiprotich Kimaru
Citation:	R S v B S [2013] eKLR
Advocates:	none
Case Summary:	-
Court Division:	Family
History Magistrates:	none
County:	Nairobi
Docket Number:	-
History Docket Number:	none
Case Outcome:	Petition allowed
History County:	-
Representation By Advocates:	-
Advocates For:	none
Advocates Against:	-
Sum Awarded:	none
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REPUBLIC OF KENYA

COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO.51 OF 2010

R S.....PETITIONER

VERSUS

B S.....RESPONDENT

J U D G M E N T

The Petitioner and the Respondent were on 5th May 1985 married at Shree Lohana Mahajan Mandal Temple in Nairobi. The marriage was blessed with three (3) issues born between 1987 and 1994. All the children are now adults. According to the Petitioner, the marriage has not been a happy one. He accuses the Respondent of committing the matrimonial offence of cruelty. In particular, the Petitioner complained that the Respondent humiliated him before members of his family and before his friends. He complained that the Respondent refused to perform her wifely duties by refusing to prepare meals for him. The Petitioner accused the Respondent of refusing to grant him his conjugal rights. The Petitioner complained that the Respondent had neglected him since his business went into financial crisis. For the above reasons, the Petitioner was of the view that his marriage to the Respondent had irretrievably broken down with no possibility of salvage. He urged the court to grant his petition for divorce.

At the hearing of the petition, the Respondent was served with the petition for divorce. She did not enter appearance. Neither did she file a response to the petition. The Deputy Registrar of this court issued a certificate certifying this cause as a suitable one to be heard as an undefended divorce cause. During the hearing of the petition, this court heard oral evidence adduced by the Petitioner. The Petitioner reiterated the contents of this petition for divorce. He further testified that he had lived apart from the Respondent for a period of more than ten (10) years. Although they share the same house, they sleep in different bedrooms. He told the court that there is no longer love or affection between them. He urged the court to grant his petition for divorce.

This court has carefully considered the evidence adduced by the Petitioner in support of his petition for divorce. It was clear to the court that the marriage between the Petitioner and the Respondent has indeed irretrievably broken down. The Petitioner and the Respondent have not related as husband and wife for a period of more than ten (10) years. Although the Petitioner and the Respondent live in the same house, theirs is clearly a case of constructive desertion. The denial of conjugal rights is evidently a case of marital cruelty. The petition is unopposed. The evidence adduced by the Petitioner was not controverted. In the circumstances therefore, this court is of the opinion that the Petitioner proved, to the required standard of proof on a balance of probabilities, the matrimonial offence of cruelty.

In the premises therefore, the marriage celebrated on 5th May 1985 between the Petitioner and the Respondent at the Shree Lohana Mahajan Mandal Temple in Nairobi 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 this judgment. There shall be no orders as to costs. Since the children of the marriage are all adults, this court shall make no orders regarding their custody as was prayed by the Petitioner in his petition for divorce. It is so ordered.

DATED AT NAIROBI THIS 8th DAY OF OCTOBER, 2013

L. KIMARU

JUDGE



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