



The Divorce Process in Kenya

By Judith A. Kanyoko



Divorce is the dissolution of a marriage that has subsisted for three or more years. There are five forms of marriages in Kenya i.e. Civil, Christian, Hindu, Islamic and Customary. The common grounds for dissolution of all forms of marriage are cruelty, adultery, desertion, exceptional depravity and the irretrievable breakdown of the marriage. For customary marriages, additional grounds include any valid ground under the customary law of the Petitioner. Conversion to another religion and commission of rape, sodomy or bestiality is an additional ground for Hindu Marriages while additional grounds under Sharia Law apply for Islamic Marriages.

1 Parties

A Person seeking the Divorce is the Petitioner while the person against whom a divorce is sought is the Respondent. Where the ground for divorce is adultery, there may be a third party known as a co-respondent.

2 The Petition

The Divorce process starts by the Petitioner filing a Petition at the court registry. The Petition outlines the grounds for divorce and is accompanied by a Verifying Affidavit, a Notice to Appear, a List of

Witnesses and their statements and a List of Documents the Petitioner wishes to rely on. Once the Petition is filed, it is served together with the Notice to Appear, notifying the Respondent of the case. Once the Respondent acknowledges receipt, he is required to enter appearance and file a Defence and/or a Cross Petition. A Cross-petition is filed where the Respondent also wishes to have the marriage dissolved. Once the Respondent files a Defence, the case is set down for hearing. This means that the Petition is defended. Where the Petitioner is unable to serve the Respondent or the Respondent has been served but has not entered appearance or filed a Defence, the Petitioner then files an application seeking a date for hearing and any other directions from the court. If the Deputy registrar is satisfied that the Petitioner made sufficient effort to serve the Respondent or that the Respondent was served but did not enter appearance or file a Defence, the case is set for hearing. This means that the Petition is undefended.

3 Hearing

Where the Petition is defended, both parties will give oral testimony in court and may be cross-examined by the other party or their advocate. Where the Petition is undefended, the Petitioner will give oral evidence. The court may also seek clarification from the parties during the hearing. Parties will then be allowed to file any submissions if they wish and a date set out for judgment.

4 Decree Nisi

If the court finds sufficient grounds for divorce, the marriage is dissolved. The court will then issue a Decree Nisi, which is a temporary order that shows the grounds for divorce have been established and allows time for anyone to give reasons why the marriage should not be dissolved with finality. Once the duration for the Decree Nisi lapses, a Decree Absolute is issued.



5 Decree Absolute

The Decree absolute is the final stage of the Divorce and it means that the marriage has been dissolved. Its effect is that the parties are free to remarry and that laws relating to a married couple no longer bind them from the day of the decree onwards.

6 Other issues that may be determined

Other issues that may be determined during court proceedings include:

- Custody and maintenance of the children of the marriage
- Maintenance of one spouse by the other
- Division of matrimonial property
- The cost of the case