

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

DIVORCE NO.4 OF 2012

F M C PETITIONER

VERSUS

M K A RESPONDENT

JUDGMENT

The petitioner and the respondent were married in a church ceremony in the year 2005. The petitioner is now seeking for divorce against the respondent on grounds of adultery, cruelty and desertion. The petitioner pleads that as a result of the aforementioned grounds the marriage between him and the respondent has irretrievably broken down. He prayed for dissolution of the marriage between him and the respondent. He is also seeking for custody of two of the children of the marriage.

The petition was served on the respondent who entered an appearance through the firm of Wairegi Gatetua & Associates Advocates who however did not file a response.

The petitioner relied on many a number of documents that he filed in court in support of the petition. He said that the documents prove the issues of adultery and cruelty on the part of the respondent. They also prove that the respondent procured an abortion.

I have considered the evidence adduced in support of the petition. There are no sufficient grounds to prove the grounds of adultery and cruelty. The petitioner made mere assertions of the same in his pleadings but he did not elaborate on them in evidence. Those grounds have thereby not been proved.

It is however apparent that the petitioner and the respondent parted ways in the year 2011 and since then have not cohabited. The parties have therefore deserted each other. It is then clear that the marriage between them has irretrievably broken down and cannot be salvaged. The petition for divorce should succeed on this ground.

In his petition, the petitioner sought for custody of the children of the marriage and some matrimonial property. However, the petitioner did not adduce sufficient evidence on which the court could act on to make an order for custody of children. Whenever a court of law makes an order involving custody of children, it has in the foremost to consider the welfare of the children. Details on the welfare of the children were unavailable in this case. The issue can better be ventilated in a children's court. I thereby decline to issue any order on the custody of the children.

In his evidence the petitioner stated that he is no longer interested in the property mentioned in the petition. That issue is thereby dropped.

In the foregoing the court finds that the marriage between the petitioner and the respondent has irretrievably broken down. This court therefore dissolves the marriage between the petitioner and the respondent. A decree nisi to issue accordingly. The petitioner to meet his own costs of the petition.

Delivered, dated and signed in open court at Kakamega this 25th day of October ,2018.

J. N. NJAGI

JUDGE OF THE HIGH COURT

In the presence of:

The Petitionerpresent

GeorgeCourt assistant