

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT LODWAR

DIVORCE CAUSE NO. 2 OF 2016

EMN PETITIONER

VERSUS

JNM RESPONDENT

JUDGMENT

EMN the petitioner married **JNM** on 1st December, 2001 at Full Gospel Church of Kenya at Lodwar. They were issued with a marriage certificate under the African Christian marriage and Divorce Act Cap 151. They were blessed with the first child in December, 2002 but the child died in September 2003. They were again blessed with a daughter **P M** who was born on 14th June, 2004. At the time of marriage the petitioner was doing business and the Respondent was not employed. After marriage the couple lived well and the petitioner took the respondent to a teachers training college from where she graduated and employed by Teachers Service Commission and posted to [particulars withheld] primary school in Lodwar. In 2010 she enrolled for a school based degree programme of the University of Nairobi. In 2012 the petitioner's business collapsed and he asked the respondent to borrow funds to revive it. She declined and sought for a transfer to [particulars withheld] primary school a distance from Lodwar the matrimonial home. Despite his plea the Respondent had refused and or neglected to return to the matrimonial home. She has therefore deserted the matrimonial home, refused conjugal rights to the petitioner and has caused the petitioner suffer mental and psychological anguish.

The respondent has also after deserting the matrimonial home given birth to a baby boy whom the petitioner disputes that he is the father. The petitioner now contends that the marriage has broken down irretrievably and same should be dissolved.

The Respondent filed answer to petition admitting the marriage, but stated that before marriage she was working with Children in Crisis a non-governmental organization, she admitted she joined [particulars withheld] TTC when their child **P N M** was young and then after college she was employed by TSC. She stated that she also supported the petitioner when he was studying for a theology course. She admitted the existence of the business and stated that she invested Shs.500,000 but declined to borrow more money for the same after it collapsed. She contends that during the subsistence of the marriage the petitioner has treated her with cruelty, threatened to kill her and chased her out of the matrimonial home and denying visitation rights to their child and constantly blaming her for the death of 3 infants born during the subsistence of the marriage. She therefore cross-petitions for dissolution of the marriage. She also prays for custody of the two issues of the marriage.

The petitioner and the Respondent gave evidence before me. Their evidence is basically similar in the averments in the petition and answer to petition. Both were frank about their source of disagreements, which were that the respondent decided to seek a transfer from Lodwar to Kainuk without the consent of and against the advice of the petitioner. Both petitioner and Respondent confirmed that there have been several meetings convened by friends and church leaders to request the Respondent return to the matrimonial home without success. The parties have been staying apart for the period since 2012 a period of four years. All efforts to reconcile them have not borne any fruit. Though they have had four years to resolve their differences, it appears to me that any attempt to give them time to resolve their marital problem will only extend each other's anxiety and psychological torture. I therefore find that the marriage has irretrievably broken down and it is in their interest that the same is dissolved. In the premises I order that the marriage between the petitioner and Respondent solemnized on 1st December,

200 at Full Gospel Church Lodwar be and 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.

On the issue of custody of the child P N M; this court calls for a children officers report to be filed in court within 14 days for it to give determination on custody.

Dated at Lodwar this 30th day of January, 2017.

S N RIECHI

JUDGE