



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
FAMILY DIVISION
DIVORCE CAUSE NO. 148 OF 2014

E.I.....PETITIONER

VERSUS

M.A.G.S.....RESPONDENT

JUDGMENT

1. The petitioner E.I. and the respondent M.A.G.S. got married on 27th September 2011 under the **Marriage Act (Cap 150)** (now repealed). They have one child, a daughter, who was born on 8th November 2012. She stays with the respondent. The couple separated in May 2013 following disagreement and have not lived together since.

2. On 2nd July 2014 the petitioner filed this petition seeking the dissolution of the marriage on grounds of cruelty and adultery whose particulars were given. The respondent filed an answer denying the allegations by the petitioner. She cross-petitioned for divorce alleging cruelty. She further pleaded that the relationship between the two had deteriorated to the extent that it was incapable of being redeemed.

3. During trial, the petitioner was represented by M/S Nyamu and the respondent by M/S Gitau. The petitioner testified that on a day in May 2013 he came home and found the respondent had thrown his belongings in the corridor. He tried to persuade her to accept him back but she declined. He stated that prior to this incident the respondent would come back totally drunk and chewing miraa. She would disappear for two or three days and would not want to be questioned about it. She was violent, would hit or bite him and was abusive. He advised that she sees a psychiatrist or psychologist but she refused. He stated that he was psychologically affected by these acts. He denied that he was engaged in any adulterous relationships. Lastly, he stated that their differences cannot be reconciled.

4. The respondent testified that the petitioner would disappear from home and send his mother and sister to come and abuse her. She recalled that there was a time when she was three months pregnant and he beat her until she miscarried. Whenever he disappeared for several days she would look for him and find him in his mother's house. Regarding how they separated, she testified that he brought workers who came and collected all his stuff and took them away. Their daughter was seven (7) months old. He returned to seek reconciliation but she refused. She denied that she had any extra-marital affair.

5. The parties did not call any witnesses. From their evidence, it was clear that each has had enough of the other. Each conceded that their differences are irreconcilable. They have been away from each other

for over three years. When the respondent was asked, she stated that they had fought severally. She stated:

“We have fought severally but he is usually the cause. We have physically fought many times. I fight him in self-defence.”

The petitioner denied that he has beaten the respondent, but also said:

“We went to police severally because of disagreements..... It is respondent who is violent. She attacked me severally with objects.”

6. My impression, after listening to and watching the parties, was that they were in a violent relationship; they were physically violent to each other. This is why they would end up in a police station severally. My view was that each party was guilty of cruelty.

7. The petitioner and the respondent have been separated for over three years. They have irreconcilable differences, and have been cruel to each other. These are the reasons why I allow the petition and the cross petition. I order the dissolution of the marriage between the two. *Decree nisi* shall issue accordingly and shall become absolute after 30 days. Each party shall pay own costs on the petition and cross-petition.

SIGNED and DATED at NAIROBI this 25th JANUARY 2017

A.O. MUCHELULE

JUDGE

DELIVERED at NAIROBI this 26th JANUARY 2017

M. MUIGAI

JUDGE