

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

DIVORCE CAUSE NO. 226 OF 2012

R N M.....PETITIONER

VERSUS

G J T.....RESPONDENT

JUDGEMENT

1. Marriage was celebrated between the parties herein on 10th September 2005 at the Karen, Nairobi. A certificate of marriage serial number [particulars withheld] was issued to them in accordance with the Marriage Act, Cap 150, Laws of Kenya (now repealed). The parties cohabited thereafter within Kenya. The couple was blessed with issue, one child – S L T (born on 24th May 1992).

2. It is pleaded that since the celebration of the marriage the respondent has treated the petitioner with cruelty. He is accused of denying the petitioner conjugal rights, of consistently verbally abusing her in public, of moving out of the matrimonial bedroom to sleep in a separate bedroom within the matrimonial home, disclosing their matrimonial issues to all and sundry, constantly dragging the petitioner's parents and siblings into their issues, disrespecting her by accusing her of having an affair with a fellow woman, and extending his hostility to their minor child. She pleads that the marriage has broken down irretrievably. She prays for dissolution of the marriage, payment of alimony, custody of the minor child, and costs of the suit.

3. Upon being served with the divorce papers, the respondent entered appearance on 20th February 2013 and filed an answer to the petition on even date. In his answer, the respondent largely denies the allegations made against him by the petitioner, and offers some explanations to some of them, especially the fact that he suffered from diabetes which made it difficult for him to perform his conjugal duties, saying that on such occasions the petitioner would be hostile to him.

4. The petitioner filed a reply to the answer to state that the respondent threw her out of the matrimonial bedroom after he failed to discharge his conjugal duties.

5. On 9th May 2013, the Deputy Registrar cleared the petition to proceed as defended.

6. The petition was heard on 27th April 2017. The Petitioner testified but the respondent did not. Her testimony gave vent to the allegations made in her petition. She stated that the parties had been living separately for the last four years. She informed the court that she was relying on the ground of cruelty enumerated in the petition, saying that there was no chance of reconciliation for the marriage had broken down irretrievably. She said that they had reached settlement on the issues of the child and the property, and were about to execute the relevant agreement

7. From the material placed before me it is plain that the marital relationship between the petitioner and the respondent has totally broken down. I have noted that cohabitation has been broken, and parties have been living separately or apart for over four years. The marriage no doubt has practically come to an end, and cannot be salvaged.

8. In the circumstances, I am moved to make the following final orders:-

(a) That the marriage between the petitioner and the respondent, celebrated on 10th September 2005, is hereby dissolved;

(b) That decree *nisi* shall issue forthwith, to be made absolute within thirty (30) days; and

(c) That there shall be no order as to costs.

DATED, SIGNED and DELIVERED at NAIROBI this 29TH DAY OF SEPTEMBER, 2017.

W. MUSYOKA

JUDGE