

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO.213 OF 2013

B N WPETITIONER

VERSUS

N E P.....RESPONDENT

JUDGMENT

1. The Petitioner has filed a petition dated 27th September 2013 seeking the dissolution of her marriage to the respondent. She got married to the respondent on 24th September 2004 at the Registrar's of Marriages office in Nairobi. After the said marriage the parties cohabited in Mlolongo 2004-2009, Imara Daima 2009-2011 and Green Park Estate on Mombasa Road- 2011-2013. The marriage was blessed with one issue S W Peacock.
2. The petitioner argues that since the said marriage the respondent has been guilty of adultery with women known or unknown to the petitioner subjecting the petitioner to emotional anguish and turmoil. That sometime in 2005 the respondent committed adultery with a bar maid known as only M when the petitioner was pregnant. That sometimes in 2007 the respondent committed adultery with a prostitute known as E based at Lokichogio with whom he had a child. That the respondent committed adultery with an Asian workmate sometime in 2011. That in 2012 the Respondent committed adultery with a white woman workmate. That the respondent admitted to the adultery in a, b, c and d on 29th July 2013.
3. The petitioner avers that the Respondent has been guilty of persistent cruelty and hostility towards the petitioner and has subjected the petitioner and the issue of marriage to both physical and psychological torture. She particularized cruelty as; being a habitual drunk and neglects to discuss family affairs with the petitioner, constantly remarks that he will hit the petitioner and widen the gap between her teeth. That in 2008 he came home drunk and assaulted the petitioner forcing her to hide in the car which he hit repeatedly denting it. That sometime in April 2010 the respondent broke a wine bottle and threatened the petitioner before the issue of the marriage and her 9-year-old brother. That in August 2013 the respondent embarrassed the petitioner in presence of bar maids in Savanna delta Club and forced her to pay the bill including the barmaids' bills. That in August 2013 the respondent threw the petitioner out of the family car with threats of injury and abandoning her on the roadside.
4. The petitioner claims that due to the said cruelty she had to leave the matrimonial home and the respondent caused her to constructively desert the marriage. The respondent is of ungovernable temper. She claims that the marriage has irretrievably broken down and there are no chances of reconciliation. She denies condoning the respondent's violence, cruelty and desertion. She seeks dissolution of her marriage to the respondent and cost of the application. That the respondent during the duration of the marriage verbally abused the petitioner in the presence of the child of the marriage. That the respondent has uncontrollable temper and in deference towards the petitioner and embarrassed the petitioner in public on numerous times. That the respondent would on several occasions force the petitioner to clean up after visiting the washroom even when he does not flush. That he had no respect for the petitioner's family and denied her conjugal rights.
5. The petitioner avers that the respondent had been guilty of desertion since 2009. The respondent has refused to be near home, forbids the petitioner to join him at work, and only visits the matrimonial home 20 days in a calendar year. That the respondent is a perpetual drunk and distant to issue of the marriage. That the petitioner has been constructively separated from the respondent

since 28th July 2013 and has not resumed cohabitation since 8th January 2005. That efforts to reconcile the parties have been in vain due to the respondent's said acts of cruelty. That due to the respondent's acts of adultery, cruelty and desertion the marriage has irretrievably broken down and urges the court to dissolve their marriage solemnized on 24th September 2004 and that the respondent bears cost of the petition.

6. The respondent filed his answer to the said petition on 29th October 2013. He avers that in 2007 while the petitioner was working for [particulars withheld] he received numerous messages and phone calls from his colleagues and friends that she was having an affair and committing adultery and this caused him emotional anguish and turmoil. He avers that he has always taken care of the issue of the marriage and pays a monthly upkeep of \$1,500, solely pays for their matrimonial home mortgage of \$2,500 pays the child's school fees, uniform and her general upkeep and health insurance. Pays for maintenance of the motor vehicle, general repairs, furniture, and fittings and has always paid for the family's holiday abroad. He avers that despite paying for the petitioner's undergraduate, master's and PHD the respondent has not had any gainful employment and depends on him for all her upkeep. That he takes care of the petitioner's mother giving her \$100 every month and pays school fees for her siblings. That the petitioner is not coming to court with clean hands as she withdrew \$10,350 from their joint account where she doesn't make any contribution. He states that on arriving from Sri Lanka the petitioner denied him use of the family vehicle and access of his funds after cleaning up his account and has also denied him entry into the matrimonial home and as a result he has limited access to his daughter and has been rendered penniless and homeless and has to rely on the good will of friends for survival.
7. The matter came up for hearing on 4/2/2016. The petitioner in her testimony reiterated the averments of her petition. She added that they no longer live together as such after the marriage as the respondent would go away for 3 months and come back for 2 weeks then travel again for work. That during the marriage the respondent suggested they go for counseling and he promised not to drink again.
8. The respondent testified that on 28/7/13 during the daughter's birthday that he and R went to get a jacket from the bedroom and the wife was no there that he and R were just talking and there was no adultery. He stated that he worked for [particulars withheld] and he would come after 3 months adding that he was the only one working as the petitioner. He admitted being arrogant but stated that he supported her mother and siblings. That the petitioner was very insecure and used to go through his phone. That she used bad language and did not respect him despite providing for him and their daughter.
9. The petitioner has raised two grounds; cruelty and adultery whilst the respondent claimed that he was informed by people that the petitioner was having affairs and committing adultery and this he claims caused him emotional anguish and turmoil. Cruelty and adultery are grounds provided for under the Matrimonial Causes Act Cap 152 (now repealed) and the Marriage Act 2014. Section 8 of the Matrimonial Act (now repealed) outlines grounds of divorce. On the allegation of adultery, I find the petitioner has not proved her claim. I also find that the respondent did not adduce sufficient evidence to prove that the petitioner was having affairs as alleged and as such I dismiss his cross petition. The petitioner has narrated various incidences, which in my view amount to cruelty on the respondent's part, and as such I find she has proved her allegation of cruelty meted to her by the respondent. Further it is evident that the marriage between the parties has irretrievably broken down and there is no possibility of reconciliation. I therefore dissolve the marriage between the petitioner and the respondent that was celebrated at the Registrar of Marriage office in on 24th September 2004. A decree nisi to issue and to be made absolute within 30 days. Cost in the cause. It is so ordered.

Dated, Signed and delivered this 24th day of *March* 2016.

R. E. OUGO

JUDGE

In the presence of:

..... **For the Petitioner**

..... **For the Respondent**

Ms. Charity

Court Clerk