

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO.30 OF 2015

W O M.....PETITIONER

VERSUS

M F T.....RESPONDENT

JUDGMENT

1. W O M the petitioner hereinafter referred to as the petitioner filed a petition dated the 11th of February 2015 against the Respondent M F T hereinafter referred to as the respondent, seeking that the marriage between him and the respondent be dissolved and that the respondent be condemned to bear the costs of the cause.
2. The petitioner grounds for dissolution of the marriage are desertion and cruelty. He avers that the respondent left their matrimonial home in 2013 without any provocation and/ or legal; justification and has since not returned since. The particulars of cruelty are that the respondent denied the petitioner his conjugal rights, that she was cold and callous towards the petitioner, frequenting her friends' home for night outs and sleep overs and neglecting her duties as a wife thus causing him untold suffering, being rude and using unsavory language towards the petitioner, refusing to attend to household chores and duties and depriving him of spousal love, care and support as is required to sustain a healthy marriage.
3. The petitioner depones that he has not been an accessory to condoned or contributed to the cruelty and desertion, nor is the petition presented in collusion between him and the respondent.
4. The respondent filed an answer to the petition and a cross petition. She states that she left the home because the petitioner became violent to her without provocation and that she left because the petitioner's violent acts persisted, that she has tried to resolve their issues but to no avail. She denied being cruel to the petitioner as alleged and averred. In her cross petition she seeks a dissolution of the marriage on grounds of cruelty. She avers that the petitioner was unkind to her, he used to insult her, he was violent towards her and at one time she had to flee and at some other time he held her by the neck and strangled. That the petitioner has been adulterous and deserted the matrimonial home proceeded to live with another woman and impregnated her, that the petitioner was emotionally and physically unavailable for her and created such distance and remoteness that she felt alienated and unwanted. She seeks that the petitioner's petition be dismissed and that their marriage be dissolve and that the petitioner be condemned to bear the costs of this cause.
5. The matter proceeded as a defended suit on the 24/3/2016. The petitioner testifies that they got married with the respondent on the 10th of January 2012 and were issued with a marriage certificate, exhibit No.1. They have no children. That at the beginning of their marriage his wife was okay but after a few months she began having sleepovers. There was a time was she away for 3 nights. That she denied him conjugal rights and caused her mental distress by not being there for him. That she was abusive when he asked about the sleepover. That in May 2013 she left and returned in September 2013, left again and has not returned. They have tried to work things over but there has been no reconciliation and that when they spoke last she told him to move on with his life. That he does not know what made her leave. He denied being adulterous or physically violent towards her . He denied that he has a wife and a one year old child. He admitted that she walked out after a confrontation.
6. The respondent testified that they got married on the 10/1/12 and for the first 6 months all was well. That one evening she asked if she could go for her brother's party which was a sleepover. The petitioner threw the gift at the wall and scolded her. She packed and left as she did not know

if she would be his next target on the wall. Later they held a meeting and she went back. Then in May 2013 they were to attend a mutual friend's party they were to meet there. He did not attend the party and since he had not gone for her, she spent at the said place. On going back to the house she found it locked and on returning the petitioner held her by the neck, scolded her and threw her on the wall. She left but when she visited him he became violent she did not return thereafter she left in September 2013. At one time she returned to the house to collect her certificates and found a woman who was heavily pregnant. She testified that there are no chances of reconciliation and that he has never contacted her even after she went back to her home. During cross-examination she testified that she did not love night parties and that she attended such parties twice only and at one time she did not go back because it was late. She admitted that though she alleged violence she did not report to the police that her life was in danger but it was not a lie that he strangled her.

7. The parties chose not to submit, I have considered the evidence adduced and the law relating to divorce proceedings. Section 8 of the Matrimonial Causes Act Cap 152 provides for the grounds of divorce, cruelty and desertion are amongst the said grounds. From the evidence adduced it is evident that the petitioner and the respondent had differences within their marriage that led to their separation. According to each of them the other partner was unkind and did not give spousal love or care. This was evident from their evidence in court. It is evident that the marriage between the two has broken down and there is no possibility of reconciliation. It appears to this court that each want to move on with their lives. Their evidence demonstrates cruelty to each other that led to emotional distress and separation. I therefore dissolve their marriage that they celebrated on the 10th of January 2012. A decree *nisi* to issue and to be made absolute within 30 days. Each party to bear its own costs. It is so ordered.

Dated, signed and delivered this **31st** day of **May 2016**

R. E. OUGO

JUDGE

In the Presence of:

.....For the Petitioner

.....For the Respondent

Charity..... Court Clerk