



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**FAMILY DIVISION**

**DIVORCE CAUSE NO.47 OF 2013**

**F M M.....PETITIONER**

**VERSUS**

**G M M.....RESPONDENT**

**JUDGMENT**

1. The petitioner is a retired teacher and the respondent is an accountant. They are both Kenyan citizens who started living together as husband and wife in the year 1975. They later formalized their relationship by undergoing a marriage ceremony conducted on 13<sup>th</sup> June 1981 at the Registrar of Marriages office in Nairobi. The couple cohabited in Nairobi until sometime in the year 2008 when the respondent left their matrimonial home allegedly due to the respondent's cruelty. The couple has four adult children.
2. The petitioner filed this petition seeking the dissolution of their marriage on the grounds of cruelty and adultery, particulars of which she gave. She stated that the respondent had been physically and verbally abusive towards her for many years and this had caused her psychological and emotional harm. She pleaded that the respondent was cohabiting with unknown woman in their matrimonial home as well as referring to the other woman as his wife. She asked that the marriage be dissolved as it had irretrievably broken down. She further asked for maintenance and/or alimony as well as costs.
3. The respondent filed an answer to the petition as well as a cross petition. He denied all allegations of cruelty and adultery levelled against him in the petition. In his cross-petition, the respondent asked for the dissolution of the marriage on the grounds of desertion, cruelty and adultery. He stated that the petitioner deserted the matrimonial home on the 23<sup>rd</sup> January 2008 and has been living away since then. He also stated that the petitioner had treated him with untold cruelty which had caused him mental anguish and emotional trauma.
4. This court on 23<sup>rd</sup> January 2015 gave its ruling on the application for alimony pending the hearing and determination of this divorce cause. The divorce proceedings were disposed of by way of oral evidence. The petitioner was not present during the hearing to present her case. The court was informed that the petitioner who resides in the USA was scheduled for surgery and was not able to travel for the hearing. Counsel for the petitioner asked that the divorce be determined on the basis of the petition filed.
5. The respondent testified in support of his case. He testified that on 23<sup>rd</sup> July 2008 he came home to find the petitioner had deserted the matrimonial home. She switched off her phone for a week. He later got hold of her and convinced her to go back to the matrimonial home, which she did but only stayed for 3 days after which she left for good. Efforts by both the respondent and other family members to talk to her were not successful. She never returned to the home. Counselling sessions did not bear any fruits. The respondent further testified that he tried to pursue the petitioner to return to the matrimonial home after her accident in July 2012. The petitioner instead

went to stay with their daughter upon being discharged from hospital. In July 2014 she left for the USA where she stays with their children. It was the respondent's case that the marriage could not work as he had done all he could to salvage it in vain. He reiterated what was stated in his answer to the petition and cross-petition denying allegations of cruelty and adultery levelled against him. He further denied living with a woman stating that he has been living alone for 9 years since the petitioner deserted their home. He asked that the marriage be dissolved, the petition be dismissed and that he be awarded costs.

6. The respondent's evidence was not controverted. It was believable. From the evidence, I find that the petitioner was guilty of desertion, and that her overall conduct caused untold mental suffering and anguish to the respondent. She was cruel. On the two grounds, I allow the respondent's cross-petition with costs. The marriage between the two is hereby dissolved. *Decree Nisi* shall issue and shall become absolute after 30 days. The petition is dismissed with costs. The orders of maintenance and alimony that were issued on 23<sup>rd</sup> January 2015 are hereby discharged.

**DATED and SIGNED at NAIROBI this 15<sup>th</sup> day of JUNE 2016.**

**A.O. MUCHELULE**

**JUDGE**

**DELIVERED AND SIGNED this 16<sup>th</sup> day of JUNE 2016.**

**W. MUSYOKA**

**JUDGE**