

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

DIVORCE CAUSE NO. 162 OF 2013

NNM.....PETITIONER

VERSUS

S K K.....RESPONDENT

JUDGMENT

1. The petitioner and the respondent got married at the Registrar of Marriages Office in Nairobi on 1st August 2001 under the now repealed **Marriage Act (cap 150)**. They cohabited as husband and wife in several estates within Nairobi between 2001 and 2012, and were blessed with one child called SWHK who was born on 16th July 2008.

2. In the petition dated 5th August 2013 the petitioner sought the dissolution of their marriage on the ground of cruelty, particulars of which were listed. She also prayed that she be granted the sole custody of their child SWHK and that an order be made directing the respondent to contribute towards the upkeep and maintenance of the child.

3. The respondent filed an answer to the petition and cross-petitioned for divorce. He denied all allegations of cruelty levelled against him and put the petitioner to strict proof. He, however, admitted that their marriage had irretrievably broken down but attributed the same to the petitioner's cruelty and adultery, particulars of which he stated in the cross-petition. In his amended answer to the petition, the respondent stated that he was concerned about the explicit exposure of their child to the petitioner's adulterous liaisons. He asked that the petition be dismissed and the cross-petition be allowed, both parties be granted joint legal custody of the child, with actual custody, care and control of the child being vested in both parties equally; that both parties be ordered to contribute equally to the upkeep and maintenance of the child, an order be issued restraining either party from removing the child from the court's jurisdiction without the leave of the court and/or written consent of both parties. Lastly, he asked that the petitioner be ordered to release her personal belongings including furniture, crockery and utensils.

4. The respondent testified that they started having marital problems in August, 2012 when he returned to the country from Afghanistan to attend his father's funeral. In December of 2012 the petitioner informed him that she would be moving out of their matrimonial home. She indeed left. Since then they have not lived together or had any sexual relationship. He testified that several efforts by both family and their church members to reconcile them had not borne any fruit. On 3rd March 2013 she called the respondent to a meeting where she informed him that she was seeing another man. He stated that the marriage cannot be salvaged. He asked that he be granted joint custody, care and control of the child and each to equally contribute towards the upkeep of the minor.

5. I accept the respondent's evidence and find that the petitioner's conduct was cruel and that she was a confused adulterer. It is obvious from the evidence tendered in court that the marriage has irretrievably broken. I order its dissolution. A *Decree Nisi* shall issue and become absolute after 30 days.

6. The petitioner and the respondent shall have joint custody, care and control of the child SWHK. The

respondent shall have reasonable access to the child. The present status regarding physical custody, upkeep and maintenance shall otherwise remain.

7. The petition was not proved and is hereby dismissed. Each party shall pay own costs on the petition and cross-petition.

DATED and SIGNED at NAIROBI this 2ND June, 2016.

A.O. MUCHELULE

JUDGE

DATED and DELIVERED at NAIROBI this 9TH June, 2016.

W. MUSYOKA

JUDGE