



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 226 OF 2014

BETWEEN

J K NPETITIONER

AND

M W K.....RESPONDENT

JUDGEMENT

1. On 28th December, 1974 the Petitioner then a bachelor known as J K N lawfully married the Respondent M W K then a spinster and a certificate Serial No. [particulars withheld] issued to them in accordance with the **Marriage Act Cap 150 Laws of Kenya**. The marriage was celebrated at PECA Nyahururu in Nyandarua District and thereafter they cohabited as husband and wife at Dagoretti, Nairobi.

2. The litigants were blessed with five children as follows:

- i. P M born in 1969
- ii. F W born in 1974
- iii. S N born in 1976
- iv. D W born in 1978
- v. M K born in 1980

The Petitioner has another issue with Ms. E M namely V W born in 2010. At the time of filing the Petition both the Petitioner and Respondent were domiciled in Kenya and they profess the Christian faith.

3. The Petition filed on 19th November, 2014 is premised on grounds of cruelty and desertion by the Respondent. The Petitioner stated that the Respondent had denied the Petitioner his conjugal rights. That the Respondent had consistently misused the family reserves and kept the Petitioner out of family income. Further that the Respondent exhibited arrogance that led to irreparable damage to their relationship.

4. Upon being served with the process, the Respondent filed her Answer to the Petition and denied all the grounds advanced by the Petitioner, calling the Petitioner to strict proof thereof.

5. On 8th October, 2015 the Deputy Registrar certified that the matter was suitable to proceed for hearing

as a defended cause for one day in Nairobi. At the hearing on 21st January 2016, the Petitioner testified and reiterated what he had set out in the Petition. The Respondent also testified and reiterated what she set out in her answer to the Petition.

6. During the hearing, the Petitioner told the court that due to the aforesaid acts of cruelty and adultery set out in his petition, he and the Respondent could not continue to hold out as husband and wife. He, therefore, asked the court to dissolve the marriage between him and the Respondent. He also prayed that the Respondent be ordered not to use his name or to return the ring to the Petitioner.

7. In her answer to the Petition, the Respondent stated that the Petitioner started having illicit affairs in 2000 and would disappear from home to cohabit with his lovers at different times. That the Petitioner finally deserted the matrimonial home in 2008 and went to live with one E M , with whom he has cohabited to date.

8. The Respondent complained that the Petitioner had on several occasions treated her with cruelty and had physically assaulted her causing her bodily injuries. The Respondent asserted that on one occasion the Petitioner set upon her with a club when she confronted him about his adulterous behaviour and badly beat her up causing her spinal injuries which persist to date.

9. Further that on another occasion the Petitioner physically assaulted the Respondent and injured her jaw causing the loss of four front teeth. That due to the injuries that the Respondent suffered to her hands and legs as a result of being assaulted by the Petitioner, she is unable to undertake heavy jobs.

10. On the acts of adultery, the Respondent complained that sometimes in the year 2000 the Petitioner had an illicit affair with a woman who resided in Ruai with whom he sired a child. That in the year 2006, the Petitioner started a relationship with one E M with whom he sired another child namely V M in 2010.

11. It is the Respondent's contention that the Petitioner is guilty of desertion, cruelty and adultery and does not deserve the orders sought. She prayed that the Petitioner be restrained from physically and verbally abusing her and from coming within 50 metres of the Respondent without her consent or within such other distance that the court may deem necessary.

12. The Respondent also urged the court to restrain the Petitioner from harassing and or interfering with the Respondent's life and quiet enjoyment of the matrimonial home in Dagoretti/Riruta/[particulars withheld] and the Petitioner be restrained from selling, alienating or in any other way dealing with the said parcel of land. During the hearing the Respondent stated that the divorce should not be granted because the Petitioner and herself took oath before God, to stay in the marriage. That she loves the Petitioner and she is ready to accept him back in their home.

13. They confirm that this Petition has not been presented or prosecuted in collusion, neither have they connived or condoned the matrimonial offences which each has complained of. They both certify that there have been no previous proceedings filed regarding the marriage.

14. I have perused the grounds of the Petition and the Answer thereto. I have also considered the oral evidence of both the Petitioner and the Respondent as tendered in court. What is not disputed is that the parties have lived apart for the last eight years since the Petitioner deserted his home and there has been no attempt at reconciliation by either side. It is also not disputed that there has been physical abuse which has persisted in the marriage and which has caused the Respondent permanent injuries as set out in paragraph 9 and 10 of this judgment.

15. From the foregoing I make a finding that the matrimonial offences set out above have been proved on either side on a balance of probabilities. I also note that the Respondent prayed that the Petitioner be restrained from physically and verbally abusing her and from coming within 50 metres of the Respondent without her consent or with such other distance that the court may deem necessary. It is therefore evident that the marriage between this two parties remains inexistence on paper only which as the Respondent may profess to love the Petitioner. The marriage celebrated between the parties herein on 28th December,

1974 has for all intent and purpose broken down irretrievably and cannot be salvaged.

In the premise I make the following orders:

- a. That the marriage celebrated between the Petitioner and Respondent at the [particulars withheld] Nyahururu in Nyandarua District on 28th December, 1974 is hereby dissolved.
- b. That Decree nisi dissolving the said marriage is hereby issued to be made absolute thirty (30) days from the date of this judgment.
- c. There shall be no orders as to costs.

SIGNED DATED and DELIVERED in open court this **21st** day of **July 2016**.

L. A. ACHODE

JUDGE

In the presence ofAdvocate for the Petitioner

In the presence ofAdvocate for the Respondent