



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 19 OF 2013

BETWEEN

J W MPETITIONER

versus

S A A.....RESPONDENT

JUDGEMENT

1. On 15th August, 2009, the Petitioner then a bachelor known as J W M was lawfully married to the Respondent S A A 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 in Nairobi and thereafter they cohabited as husband and wife in Nairobi. There is one issue of the marriage namely K M born on 26th January, 2008.

2. At the time of filing the Petition both the Petitioner and Respondent were domiciled in Kenya, where they are both gainfully employed within Nairobi.

3. The Petition filed on 25th January, 2014 is premised on grounds of cruelty said to have been occasioned by the Respondent against the Petitioner. In the grounds of cruelty as particularised in the Petition, the Petitioner stated that the Respondent sent several text messages to the Petitioner which were abusive, demeaning and callous to the extreme.

4. According to the Petitioner, in the year 2012, the Respondent sent text messages to him and alleged that he was a failure in life as well as in the marriage. That the Respondent confronted the Petitioner in a menacing manner and attempted to provoke him to anger. Further that the Respondent's general attitude towards the Petitioner had persistently been condescending, abusive and discourteous.

5. Upon being served with the process, the Respondent filed her Answer to the Petition and a cross petition in which she denied all the grounds advanced by the Petitioner, calling the Petitioner to strict proof thereof. In the cross petition she too prayed that the marriage between the Petitioner and the Respondent be dissolved.

6. The Respondent accused the Petitioner of having denied her, conjugal rights since 2012; of having severally, physically assaulted and insulted the Respondent in the presence of the minor issue and various house helps; of having had on various occasions physically beaten the Respondent with fists, blows, battling her hitting her against the wall holding her in a stranglehold and threatening to kill her. That

these encounters occasioned her serious injuries and on one occasion she suffered a migraine and had to undergo an x-ray.

7. On the grounds of adultery the Respondent stated that sometimes in the year 2007, while she was pregnant with the only issue of the marriage, the Respondent discovered that the Petitioner had an intimate relationship with another woman. The Respondent also complained that during the years 2011 and 2012, the Petitioner would arrive home as late as 4.00 a.m. and whenever she inquired of his whereabouts, he would beat her and try to strangle her. That he once asked her what made her think she was the only beautiful woman who should never lack a man in her life.

8. On the acts of desertion, the Respondent complained that the Petitioner left the matrimonial home in early 2012, and would only visit occasionally with shopping. That as a result of the Petitioner's conduct, the Respondent called a meeting on 19th May 2012 which was attended by members of the family from both side. After deliberations the Petitioner promised to change but instead he packed his personal belongings and deserted his family to date.

9. The Respondent further urged that the Petitioner had neglected his parental responsibility and had denied their child fatherly love and care, thus exposing her to trauma and psychological torture. That the Petitioner had put the Respondent and their child at a certain standard of living and it is important that the he gives alimony to the Respondent to maintain that standard of living.

10. On 23rd July, 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 30th June, 2016, counsels recorded a consent in which they agreed that the Petitioner would not prosecute the petition and instead the Respondent would prosecute the cross-petition. Further that each party would bear their Advocate's costs.

11. During the hearing, the Respondent told the court that due to the aforesaid acts of cruelty and adultery, she and the Petitioner could not continue to hold out as husband and wife. She, therefore, asked the court to dissolve the marriage between her and the Petitioner, grant her legal and actual custody and control of their child K. M. and that the Petitioner do give the Respondent alimony pendente lite the divorce.

12. I have perused the grounds of the Petition, the Answer thereto and the grounds of the Cross-petition. I have also considered the oral evidence of the Respondent as tendered in court. What is not disputed is that the parties have lived apart for the last three years despite attempts at reconciliation by the extended family. It is also clear that there are irreconcilable differences between them and both parties are desirous of the marriage celebrated between them being dissolved.

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. From the foregoing I make a finding that due to the matrimonial offences set out above and which have been proved on either side on a balance of probabilities, the marriage between this two parties remains inexistence on paper only. The marriage celebrated between the parties herein on 15th August, 2009, has broken down irretrievably and cannot be salvaged. At least, there is no will on either side to salvage it.

In the premise I grant the petition for divorce with the following orders:

(a) That the marriage celebrated between the Petitioner and Respondent in Nairobi on 15th August, 2009 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) That the maintenance and custody of the minor issue of the marriage be determined by the lower court.

(d) The issue of alimony pendente lite divorce has been overtaken by events the divorce having been granted.

(e) Each party to bear their own costs as earlier agreed.

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