



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

DIVORCE CAUSE NO. 157 OF 2013

G W W.....PETITIONER

VERSUS

B W N.....RESPONDENT

JUDGEMENT

1. Marriage was celebrated between the parties herein on 25th October 2008 at the Presbyterian Church of East Africa (PCEA) St. Andrews Church, Nairobi, under the Marriage Act, Cap 150, Laws of Kenya (now repealed). The parties however had cohabited for some years prior to that. After the solemnisation of the marriage the parties cohabited at Karen in Nairobi, Kenya. The couple has been blessed with issue – ANW and LWW.

2. It is pleaded in the petitioner's petition dated 2nd August 2013, that since the celebration of the marriage, the respondent has treated the petitioner with cruelty, so extreme that the petitioner was forced to move out of the matrimonial home with the children. The particulars of the alleged cruelty, as itemised in the petition, are neglect, physical and emotional absence at the time of the petitioner's pregnancies and deliveries, having no regard for her and exposing her to danger and insecurity, ungovernable temper, verbal assaults, threats to divorce her, insulting the petitioner's mother, among others. She pleads that the marriage has irretrievably broken down and prays for its dissolution, custody of the children, maintenance for herself and the children, division of matrimonial property and costs of the suit.

3. The petition was served and the respondent did enter appearance and file an answer to the petition and a cross-petition, dated 30th September 2013. In the answer, the respondent concedes the marriage and the details of the family, but denies the allegations relating to cruelty. He pleads that the couple enjoyed marital bliss for the petition herein was filed on 2nd August 2013, with the petitioner moving out unprovoked on 12th August 2013 after which the petition was served. He accuses the petitioner of having engineered the break-up of the marriage by her own conduct, pleaded in the answer to the petition.

4. In the cross-petition, the respondent states that the couple had also previously cohabited at Kayole and Buru Buru in Nairobi before moving to Karen. He cross-petitions for dissolution of the marriage and on the issue of the children pleads that there are parallel proceedings at the Children's Court in Nairobi Children's Court Case No. [particulars withheld] of 2014. He relies on the grounds of cruelty and denial of conjugal rights. On cruelty, he particularises such instances as being exposed to severe financial loss when she caused cancellation of a planned trip abroad, refusing to attend his graduation ceremony, facilitating meddling into the family affairs by her relatives, being emotionally unavailable, having an improper association with another man, leaving the matrimonial home unprovoked in a manner contrived

to paint him in bad light, among others. He complains that he has been denied conjugal rights since December 2012

5. On 6th November 2014, the Deputy Registrar cleared the matter to proceed as defended.

6. The cause was heard on 8th October 2015. The petitioner did not attend court, and therefore she did not testify. It is the respondent who attended court and who testified. In his testimony he gave vent to the allegations made in his cross-petition. As the petitioner did not testify, the respondent's testimony was not controverted and the petitioner's case was not proved.

7. From the material placed before me it is plain that the marital relationship between the petitioner and the respondent has totally broken down. I have noted from the testimony of the petitioner that the parties having been living apart for quite some time now. It is my finding that there is *prima facie* proof that the petitioner was cruel to the respondent.

8. In the circumstances, I shall make the following final orders:-

a. That I allow the cross-petition herein dated 30th September 2013 and decree that the marriage between the petitioner and the respondent, celebrated on 25th October 2008, is hereby dissolved;

b. That the petition dated 2nd August 2013 is hereby dismissed;

c. That decree *nisi* shall issue forthwith, to be made absolute after thirty (30) days;

d. That the issues relating to the children of the marriage shall be resolved through Nairobi Children's Court Case No. [particulars withheld] of 2014; and

e. That there shall be no order as to costs.

DATED, SIGNED and DELIVERED at NAIROBI this 25TH DAY OF NOVEMBER, 2016.

W. MUSYOKA

JUDGE