



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**FAMILY DIVISION**  
**DIVORCE CAUSE NO. 62 OF 2012**

**K N.....PETITIONER**

**VERSUS**

**R W W .....RESPONDENT**

**JUDGEMENT**

1. Marriage was celebrated between the parties herein on 28<sup>th</sup> September 1987 at the office of the Registrar of Marriages at Nairobi. A certificate of marriage serial number [particulars withheld] was issued to them in accordance with the Marriage Act, Cap 150, Laws of Kenya (now repealed). The parties cohabited thereafter at various addresses in the United Kingdom and in Kenya. The couple was blessed with issue, three (3) children – K C (born 1994), B N (born 1996) and T W (born 1998).

2. The petitioner seeks dissolution of marriage on the grounds of desertion and cruelty. He particularises that he has been denied conjugal rights, been deserted since 2008, the respondent used to come home late on several occasions and on other occasions sleep out of the matrimonial home. He pleads that the marriage has totally broken down and all attempts to reconcile have failed.

3. Upon being served the respondent entered appearance on 14<sup>th</sup> March 2012 and filed an answer to the petition and a cross-petition on 25<sup>th</sup> May 2012, of even date. In the answer she denies the allegations made against her in the petition. On conjugal rights, she pleads that it was the petitioner who denied her her rights, threw her out of the matrimonial bedroom, had extra-marital affairs, called her a whore, and deserted the matrimonial bed. She denied coming home late or not coming at all; explaining that it was the petitioner who actually threw her out of the home and prevented her from coming back. She accuses him of being the one guilty of mistreating her by abusing her physically and verbally before relatives, friends and staff. She pleads that the marriage had broken down irretrievably on account of his conduct.

4. She cross-petitions for dissolution of marriage on the grounds of adultery, cruelty and constructive desertion. She also asks for maintenance from the petitioner. She alleges that the petitioner committed adultery with three of named house-girls, and cohabited with two other named women, one of whom he was said to be have been still living with as at the date of the filing of the cross-petition. She avers that the alleged adulterous acts have caused her unbearable pain and agony. Curiously, though she has not named any of the paramours as co-respondents.

5. On cruelty, it is pleased that the petitioner has displayed uncaring attitude towards her, verbally assaulted her, frequently physically assaulting her, forcibly locking her out of the matrimonial home and forcing her to sleep on a sofa in the sitting room, denying her conjugal rights, sexually assaulting her,

inciting his relatives against her, making false accusations against her about she wanting to kill him, falsely accusing her of extra-marital affairs, falsely accusing her of being a lesbian, falsely accusing her of infecting him with sexually transmitted diseases, chasing her away from the matrimonial home without just cause, joining hands with his girlfriend to burn her clothes, sleeping with house-girls on the matrimonial bed after locking her out, among others. She pleads that the petitioner has indicated that he no longer loves her and has severally thrown her clothes and other belongings out saying that he wanted her to leave him.

6. On desertion, she pleads that in October 2007 the petitioner had asked her to leave by 1<sup>st</sup> December 2007, but when she failed to he began ill-treat her forcing her to leave. She avers that she has not resumed cohabitation since then. She avers that the parties have not had conjugal connection since then, and the marriage has consequently been at an end.

7. The petitioner reacted to the cross-petition by filing an answer to it on 12<sup>th</sup> June 2012, dated 11<sup>th</sup> June 2012. He denies the allegations made against him in the cross-petition. He states that he moved out of the matrimonial bedroom to avoid the strong smell of alcohol that the respondent reeked off. He pleads that the respondent is not entitled to maintenance as she had disposed of some family business and kept the proceeds to herself, using the same to set herself up in business. She is also said to collect income from one of the petitioner's properties at Ongata Rongai.

8. The matter was heard on 2<sup>nd</sup> July 2016. Only the petitioner testified. However, prior to that both parties dropped the grounds of cruelty, desertion and adultery, and agreed to proceed on only on ground, that the marriage had irretrievably broken down. The petitioner proceeded along those lines.

9. From the material placed before me, it is clear that no love is lost between the parties hereto. The two have not been together since 2008. Their marriage has practically come to an end. It is irretrievable and cannot be salvaged.

10. In the circumstances, I am moved to make the following final orders:-

**(a) That the marriage between the petitioner and the respondent, celebrated on 28<sup>th</sup> September 1987, is hereby dissolved;**

**(b) That decree nisi shall issue forthwith, to be made absolute within thirty (30) days; and**

**(c) That there shall be no order as to costs.**

**DATED and SIGNED at NAIROBI this 16<sup>TH</sup> DAY OF DECEMBER, 2016.**

**W. MUSYOKA**

**JUDGE**

**DELIVERED and SIGNED this 20<sup>TH</sup> DAY OF DECEMBER, 2016.**

**R. OUGO**

**JUDGE**