



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**

**FAMILY DIVISION**

**DIVORCE CAUSE NO. 136 OF 2015**

**JWK.....PETITIONER**

**VERSUS**

**JRKT.....RESPONDENT**

**JUDGEMENT**

1. Marriage was celebrated between the parties hereto on 12<sup>th</sup> October 2013 at the Consolata Shrine Catholic Church, 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number [Particulars Withheld] was issued to them in accordance with the Marriage Act, Cap 150, Laws of Kenya (now repealed).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 [Particulars Withheld] Estate in Nairobi, Kenya. The couple was not blessed with issue.

2. The petitioner pleads for nullification of the marriage on the grounds that she had discovered after the celebration of the marriage that the respondent had previously entered into another marriage at his home country and he had three (3) children from that union. She appears to be arguing the respondent had no capacity to enter into marriage with her in Kenya.

3. She also pleads, without prejudice to the issue of another marriage; that the respondent had treated her with cruelty. The particulars of cruelty given in the petition are that the respondent had failed to provide material support to her, which left her to survive on her own. She also pleads that he verbally and physically abusing her. She asserts that the marriage has irretrievably broken down and seeks annulment and or dissolution of the marriage.

4. Upon being served the respondent entered appearance on 3<sup>rd</sup> December 2015 and filed an answer to the petition and a cross-petition on the same date, dated 2<sup>nd</sup> November 2015. In the answer he denies the allegations made against him in the petition, particularly the allegation that he had previously contracted a marriage in Cameroon and that he had children with the wife that he married then. He cross-petitions for dissolution of marriage on the grounds of cruelty. He accuses the respondent of having had an unhealthy relationship with named Nigerian man which caused the respondent stress. The Nigerian man was allegedly entertained at the matrimonial home on several dates, where the respondent found the petitioner erotically dancing with him. The petitioner was said to have been violent to the respondent when the latter sought to establish what was in their guest room that had been occupied by the Nigerian man. On 27<sup>th</sup> September 2015, the respondent alleges that he was evicted from the matrimonial home and since then the Nigerian man lives in the matrimonial home with the petitioner. He pleads for the dismissal of the petition, and the dissolution of the marriage founded on his cross-petition. He also pleads for maintenance or alimony.

5. On 17<sup>th</sup> March 2016, the Deputy Registrar cleared the petition to proceed as a defended cause.
6. The hearing commenced on 24<sup>th</sup> March 2016. Both parties testified giving vent to the allegations made in their respective pleadings. The petitioner testified that she lived with the respondent in a house she had bought before she married him. She stated that she was prompted to seek divorce after discovering that the respondent had children upon seeing their names on his passport. On cross-examination she said that the children were of Romanian descent. She stated that the respondent never provided for her although at the time she married him he alleged to be a businessman.
7. On his part, the respondent testified that he was fully dependent on the petitioner after marriage, and that the petitioner knew at the time the marriage was contracted that he was unemployed. He denied having any children, although I do note that he did not categorically denounce the passport which bore the names of the children alleged to be hers. On cross-examination, he however, stated that the said passport was his, but then he said he did not know the children on the passport. He admitted having studied in Romania. He also seeks dissolution on the grounds of unfaithfulness. He accused the petitioner of cheating on him with the Nigerian man named in his cross-petition. He asked for maintenance at the rate of Kshs. 50, 000.00.
8. At the conclusion of the matter, I directed the parties to file written submissions. There has been compliance with the said directions.
9. The petitioner in this case alleges that the respondent herein had failed to provide for her, and she grounds her petition for dissolution of marriage on that ground. Yet it emerges that the respondent is a foreigner who claims to be unemployed. There could be credence in his claim as both parties admit that they lived in premises owned by the petitioner. The petitioner herself stated at the trial that although the respondent claimed to be a businessman, she found that he had no penny on him after they moved in. She even stated that she was giving him money for his upkeep. It emerged at the trial that the petitioner owned quite some property, all acquired before the marriage, consequently the petitioner could not have been needy of maintenance from the respondent. The cruelty founded on this allegation cannot possibly hold.
10. The other principal allegation by the petitioner is that the respondent had previously married and that he had children from the previous relationship. No material was placed before me which pointed to a previous marriage. The material the petitioner relies on is pictures of children in a passport of the respondent. She argues that those children were of the respondent and she had not been told about them. The respondent admitted at the trial that the passport was his, but said he did not know the children endorsed in it. I am not convinced that he would not know children who are endorsed in his passport. It means that he is not being truthful. I am convinced that these are his children; although I am not convinced that the existence of such children was proof that he had previously married, and that that previous marriage was subsisting at the time the marriage to the petitioner was contracted. Nevertheless, it would be cruel to lead a person into a married life where she has to share her man with children who are not disclosed at the time of the marriage is celebrated.
11. The respondent seeks divorce on grounds of adultery. He accuses a particular person of committing the adultery with the petitioner. The petitioner did not file an answer to the cross-petition, and therefore the allegation of adultery was not controverted in the pleadings. In her evidence in chief, the petitioner did not advert to the matter, only saying in cross-examination that the said man was her business partner. The said alleged paramour was not joined in the proceedings as a co-respondent by the respondent. I note that the only incident that the respondent narrated as evidence of adultery was the alleged erotic dance. Adultery was not even cited as a ground for the divorce sought in the cross-petition. Critically, no particulars of adultery are detailed in the cross-petition.
12. I am not altogether satisfied that the parties have established the matrimonial offences alleged in their pleadings. I am not satisfied that there was cruelty meted out on the petitioner of such degree as to warrant dissolution of a marriage. The issue of the photographs of the children in the respondent's passport paint him as dishonest. The cruelty arising from that is however, in my view, only borderline.

Nothing turns on the adultery allegations.

13. I note, however, that the parties are separated and have lived apart since 27<sup>th</sup> September 2015. The marital cohabitation has therefore been broken. The marriage has not been reconciled since then. Both sides have applied for dissolution of the marriage on different grounds. I am satisfied that the marriage has broken irretrievably.

14. The respondent prays for maintenance from the petitioner. I have noted that both parties were aged 47 at the time they contracted the marriage on 12<sup>th</sup> October 2013. There is no evidence that the respondent is not able-bodied, and therefore in need of support from another person. I am also mindful of the provision in Article 45(3) of the Constitution, which puts the two genders at par during and after marriage.

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

**(a) That the marriage between the petitioner and the respondent, celebrated on 12<sup>th</sup> October 2013, 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**