

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO.241 OF 2012

B O O.....PETITIONER

VERSUS

M A O.....RESPONDENT.

JUDGMENT

1. On 3rd of May 1996, the Petitioner and the Respondent were married under the Marriage Act at the Narok District Commissioner's office in Narok County. Before the registration of their marriage, the petitioner and the respondent had cohabited together in Narok town as husband and wife since May 1994. The marriage between the petitioner and the Respondent has been blessed with one issue namely J O O born in the year 1997. The petitioner avers that since the celebration of the marriage the Respondent has treated the petitioner with cruelty. He has particularized the alleged cruelty as follows;
 - i. After the birth of their only issue of marriage in the year 1997, the Respondent became so cruel to the petitioner assaulting him on various occasions.
 - ii. In the year 1997, for unknown reasons, the respondent treated with a lot of disrespect, threatened to burn down their matrimonial house forcing the petitioner to report the incident to police where after the Respondent was arrested.
 - iii. On several occasions, the Respondent has accosted the petitioner at his place of work and directed insulting and derogatory abuse towards him and his family.
 - iv. In the year 2007 the respondents attacked the petitioner in front of their child and hit him with her soiled sanitary towels. In most cases, the daughter intervened when the respondent attacked and/or abused the petitioner.
 - v. On the 18th of August 2012 the respondent abused the petitioner in public and threatened to attack him forcing their daughter to intervene and plead with the respondent to stop embarrassing the petitioner in public.
2. The petitioner testified that they began staying as husband and wife with the respondent in the 1994 and they solemnized their marriage in 1996 at the D.C's office in Narok and were blessed with one child J O O. That after the birth of their child they began having problems the respondent became abusive. That in 1997 she poured kerosene on him and wanted to burn him, he reported the matter to the police and she was arrested. That in 2007 she picked up a quarrel with him and threw a soiled sanitary towel at him and it hit him. That she turned one of their bedrooms into a church and people held keshas there the whole night. That in the year 2006 he was posted to Narok on duty and on returning she refused to sleep with him thus denying him his conjugal rights. He testified that he has tried all avenues to reconcile with her but without success. He sought custody of their child who currently stays with the respondent at Narok. He stated that he visits her and takes care of her fees though he has not stayed with her since their separation. That under their customs and traditions the child belongs to the father. He argued that due to the respondent's conduct the child is not safe and that she will not be affected in any way if he is granted custody. That their daughter will stay with him and her step mother. The petitioner averred that has not condoned, connived and/or in anyway been accessory to the cruelty.
3. It is evident that the marriage between the petitioner and the respondent has irretrievably broken down. The petitioner narrated incidents of cruelty during their marriage. Cruelty is one of the grounds provided for under the Marriage Act. I therefore dissolve the marriage between the

petitioner and the respondent that was celebrated at the Narok District Commissioner's Office on the 3rd of May 1996. I however decline to grant the petitioner custody of their child. The said child has been under the care of the respondent since their separation and no issue of cruelty against the child has arisen to take the child away from her. The petitioner is however at liberty to follow up the issue of custody of the child at the children's court if need be. I make no order as to cost. It is so ordered.

Signed, dated and delivered this **29th** Day of **January 2015**.

R. E OUGO

JUDGE

In the presence of:

.....**Petitioner**

.....**Respondent**

.....**Court Clerk**