



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
DIVORCE CAUSE NO. 251 OF 2013

E I I.....PETITIONER

VERSUS

M R O.....RESPONDENT

JUDGMENT

1. The Petitioner has filed a petition dated 28th November 2013 seeking the dissolution of her marriage to the Respondent. She avers that she was married to M R O on the 3th day of February 2004, she was married to, in Nairobi, Kenya in a Civil Marriage under the Marriage Act, Chapter 150 of the Laws of Kenya. After the marriage she lived and cohabited with the Respondent at Nairobi Dam Estate in Langata; that they have two children from the marriage R O R born on 8th October 1999 and J I R born on 21st September 2005; that since the celebration of the said marriage the Petitioner and the Respondent lived together until 2009 when the Respondent left the matrimonial home and deserted the petitioner. Her grounds of divorce are desertion and cruelty particularized as follows;

Particulars of Desertion

- That on 31st May 2009 the Respondent without any lawful cause or justification left the matrimonial home at Nairobi Dam Estate and has since then stayed away from the said home without any lawful cause or justification and therein deserted the petitioner.
- That the Respondent has since the celebration of the said marriage treated the Petitioner with cruelty.

Particulars of Cruelty

- That the Respondent's callous actions have been well calculated deliberate and maliciously intended to cause the Petitioner maximum psychological and emotional pain.
- That on other occasion, during the period of co-habitation, the Respondent without any reasonable cause refused to communicate with the petitioner thereby depressing the Petitioner and mentally torturing her.
- That the Respondent's aforesaid actions have been well calculated, deliberately malicious, cruel and callous and have caused the petitioner immense grief, pain and emotional trauma.

2. The Petitioner testified as follows; that the Respondent deserted their matrimonial home on the 31st of May 2009 and he has not returned since then. The petitioner was not cross-examined by the Respondent's lawyer.
3. The Respondent filed an answer to the petition and a cross- petition. His grounds for divorce in the cross petition are cruelty and constructive desertion. The Respondent did not adduce any evidence to defend his cross petition. It is therefore dismissed with no order as to costs.
4. The petitioner's evidence was not challenged. The Respondent deserted their matrimonial home in May 2009 and has not returned since then. It is evident that there is no possibility of reconciliation and the marriage has irretrievably broken down. Section 8 of the Matrimonial Act (now repealed) outlines grounds of divorce. One of the grounds is desertion. Section 8 (b) provides that a petition for divorce may be presented to the court by either party on grounds that the respondent has deserted the petitioner without cause for a period of atleast 3 years immediately preceding the presentation of the petition. The Marriage Act 2014 at Section 66 outlines the grounds for dissolution of a marriage, amongst them being desertion by a spouse for at least three. The respondent on the 31st of May 2009 without any lawful cause or justification left the matrimonial home and has since then stayed away without any lawful cause or lawful cause and has deserted the petitioner. The petitioner has in no way condoned the respondent's cruelty nor is this petition is presented or prosecuted in collusion with the Respondent. This court therefore dissolves the marriage between the Petitioner and the Respondent celebrated on the 13th day of February 2004. The Petitioner is granted the sole custody of the children of the marriage. The Respondent shall have visitation rights to be agreed between the parties. The Respondent shall contribute to the upkeep and maintenance of the children of the marriage. A decree nisi to issue forthwith and to made absolute within 30 days. It is so ordered.

Dated, signed and delivered this 29th day of January 2015.

R. E OUGO

JUDGE

In the presence of:

..... **For the Petitioner**

..... **For the Respondent**

.....**Court Clerk**