

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

DIVORCE CAUSE NO. 259 OF 2013

S M.....PETITIONER

VERSUS

J N.....RESPONDENT

JUDGMENT

1. The petitioner and the respondent celebrated their marriage on 3rd April 1999 at the St Stephen's A.C.K. Church in Nairobi. They lived and cohabited at Biafra and in Nairobi West. The marriage was blessed with a son, A M, who was born on 26th January 2000.

2. On 9th February 2013 the petitioner filed this petition seeking the dissolution of the marriage and to be granted reasonable access to the child. The petition was grounded on cruelty and desertion. The Cause was not defended, and therefore the petitioner's evidence was not challenged.

3. The petitioner testified that in February 2003 the respondent left the matrimonial home and did not return. What happened was that on that day she came home at 9.00 pm. When the petitioner sought to find out where she had been she instead shouted back to say she was going to leave and would not return. She took the child and left.

4. Prior to this incident, he said, for 1 ½ years she had refused to sleep with him. She denied him his conjugal rights during the period. She was abusive and would spend most of the time at her parents' home. She was quarrelsome and neglected him.

5. The petitioner testified that after she left he went to have her return but her mother told him that she would not return. He sent his late mother to the respondent's parents. Again, they said she would not return. In his view, the marriage cannot be rehabilitated.

6. On the evidence, I find that the respondent was guilty of cruelty and wilful desertion. As a result the marriage is beyond repair. I order its dissolution. *Decree nisi* shall issue immediately and shall become absolute after 30 days. The petitioner shall have reasonable access to the child of the marriage.

DATED and DELIVERED at NAIROBI this 22nd January, 2015

A.O. MUCHELULE

JUDGE