



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 165 OF 2012

C W K.....PETITIONER

VERSUS

G K N.....RESPONDENT

JUDGMENT

1. The Petitioner has filed a petition dated 7th August 2013 seeking the dissolution of his marriage to the respondent. She got married to the respondent on 17th May 1996 under the Marriage Act (Cap 150 of the Laws of Kenya) and were issued with certificate number *[particulars withheld]* by the Registrar of Marriage, Nairobi. After the said marriage the petitioner and the Respondent cohabited in Oloo-Surutia, where their matrimonial home is situated. However, at the time of filing this petition, the petitioner and the Respondent had separated with the petitioner residing at Kamukuru, along the Kiserian –Matasia Road, while the Respondent remains at their matrimonial home in Oloo- Surutia. The parties have five issues all of them being adults between ages 22-35 or thereabouts. The petitioner is a teacher of *[particulars withheld]* Primary school while the respondent is a retired teacher. The petitioner argues that the respondent has been guilty of cruelty against the petitioner. She particularized cruelty as follows;
 - i. Withholding love and affection from the petitioner.
 - ii. Failing to provide emotional support to the petitioner.
 - iii. That during the substance of the marriage, the respondent has created irreconcilable differences with the petitioner.
 - iv. Constant taunts and ridiculous accusations against the petitioner, casting aspersions as to her character as a reputable educationalist and staunch Christian.
 - v. Incessantly reprimanding the petitioner and calling her names, and ultimately issuing threats to the petitioner as the extent that the respondent made the matrimonial home uninhabitable, thus making the petitioner flee in fear of her life.
 - vi. Locking the petitioner in the house as the respondent goes out with the keys.
 - vii. Changing the locks of the matrimonial house when the petitioner is not home, and leaving her outside the home.
 - viii. Changing the locks of the matrimonial house when the petitioner is not home, and

leaving her outside the home.

ix. Constant accusations of witchcraft and adultery leveled to the petitioner, which accusations have caused her humiliation in the society.

x. The Respondent's open ridicules and abusive spectacles were cruel to the petitioner and such has had a stressful and devastating effect on the petitioner's physical and emotional well-being.

xi. Despite the clearly evident debilitating effect of the respondent's actions on the petitioner's physical and mental health and her emotional well-being, the respondent has stubbornly persisted in his cruel behavior.

xii. The petitioner has not in any way been accessory to or connived at or condoned the respondent's cruelty.

The petitioner prays that:

- a. The court do make an order dissolving the marriage between the petitioner and the respondent.
 - b. That the petitioner be no longer bound to cohabit with the respondent.
 - c. That pending the determination of the petition, there be an order for alimony pending suit in favour of the petitioner.
 - d. That the petitioner may be granted such secured provision and such sum by way of maintenance for herself.
 - e. That the respondent prays the costs of this petition.
 - f. That such other and further relief be granted as will meet the ends of justice this cause.
2. The respondent in his answer to the petition denied withholding love and affection or creating irreconcilable differences. He accuses the petitioner of being the one who has made the matrimonial home inhabitable as he was in constant fear for his life and has been reduced to making own food , washing his clothes and that it was the petitioner who started sleeping in a separate room. He alleges that it is the petitioner who has been having extra-marital affairs without caring about the respondent's feelings particularly with one Mr. Muthami who had confirmed to the respondent that the petitioner had been seducing him and because of the petitioner's adultery the marriage has irretrievably broken down.
 3. The petitioner in a reply to the answer to the petition she claimed that the petitioner was not assisting in paying their son's fees K L and that the petitioner testified that she wanted a divorce as the marriage was not working and this has caused her mental torture. In her evidence she denied having any affairs adding that it was the respondent who was calling her a prostitute and a witch and that she felt threatened as he had at one time pointed at her with a screw driver telling her that once there was a woman who was killed with a screw driver and also used to lock her out of the house and she was forced to go to other people's homes. The petitioner denied knowing the men the respondent alleged she had affairs with adding that some were their neighbors. She stated that David Kiragu was the father to her first child she added that their child Kevin who expected fees had since graduated.
 4. The petitioner's evidence is uncontroverted.
 5. 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 Matrimonial Causes Act Cap 152 (now repealed) and also the Marriage Act 2014. I therefore dissolve the marriage between the petitioner and the respondent that was celebrated at Nairobi Office on the 17th May 1996. The petitioner also seeks maintenance for herself. In the case of **W.M.M V B.M.L [2012] eKLR**, it was held that "*In considering a claim for maintenance, regard must be made to the provisions of Article 45 (3) of the*

Constitution of Kenya which recognizes that “parties to a marriage are entitled to equal rights at the time of the marriage, during marriage and at the dissolution of the marriage”. No spouse who is capable of earning should be allowed to shirk his or her responsibility to support himself or herself or turn the other spouse into a beast of burden but where a spouse deserves to be paid maintenance in the event of divorce or separation the law must be enforced to ensure that a deserving spouse enjoys spousal support so as to maintain the standard of life he or she was used to before separation or divorce.”

6. In her testimony the petitioner has stated that she works as a teacher while the respondent is a retired teacher. She has not stated what she earns nor has she disclosed what the respondent earns or given a schedule of her needs to justify her prayer for maintenance and as such I cannot grant the same. A *decree nisi* to issue and to be made absolute in 30 days. No order as to cost. It is so ordered.

Signed, dated and delivered this 26th Day of *February*, 2015.

R. E OUGO

JUDGE

In the presence of:

.....Petitioner

.....Respondent

Makori Court Clerk.