

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 79 OF 2010

E S MPETITIONER

VERSUS

R E K.....RESPONDENT

JUDGMENT

1. The petitioner filed a petition dated the 23rd of April 2010 seeking to have the marriage between himself and the respondent to be dissolved, that the respondent pays for the proceedings.
2. The Respondent filed an answer to the petition on the 4th of November 2010, she denies the allegations of cruelty, desertion as alleged. She did not file a cross petition.
3. This cause was heard on the 26th of February 2015. The petitioner testified as follows. The respondent is his wife. They married under Kisii customary laws in 1982. They later registered their marriage at the Registrar's office and were issued with a marriage certificate. They stayed at Langata Barracks after their marriage. They have 5 children. She left with 2 children whom she conceived from a relationship she had during the subsistence of their marriage. He was left with 3 children. In the year 2000 the respondent left their home with all her things. This happened before the naming ceremony of the 2 children whom the respondent left with. Apart from leaving the petitioner testified that the respondent was rude and did not care for him and the children, the children would be fed by neighbors. That they last slept in 1999. He has not colluded to bring this petition and he has not seen her since she left in 2000 or does he know where she is now.
4. I have read and considered the submission file by the petition on the 11th of March 2015. The Matrimonial Causes Act, 152 Laws of Kenya at Section 8, provides for the grounds for petitioning for a divorce. Desertion is one of the grounds. The petitioner's evidence is that the respondent left in the year 2000 and has since not returned. Her desertion was without cause, the petition was filed in 2010. I find that the petition has shown that desertion subsisted. The petitioner testified that the desertion caused him mental and emotional anguish. He was also denied conjugal rights, in the case of **R.A. O vs. K.O.O D. C 30 of 2013 (2014)eKLR** the court held that **"denying the petitioner conjugal rights was cruelty"**
5. There is also evidence from the petitioner that the respondent gave birth to two children who were sired by another man during their marriage and that she took away the said two children when they went for the traditional naming ceremony and has since not returned. This evidence was not challenged, based on this evidence I find that the petitioner has proved the ground of adultery as there are issues out of a relationship the respondent had.
6. The respondent has been away from 2000 it is obvious that the marriage between the petitioner and the respondent has broken down irretrievably. Accordingly I dissolve the marriage between the petitioner and the respondent solemnized on the 17th of March 1995 at the Registrar of Marriages under the Marriage Act Chapter 150 of the Laws of Kenya. A decree nisi to issue and to be absolute within 30 days. No orders as to costs. It is so ordered.

Dated, signed and delivered this 27th day of *March* 2015.

R. E. OUGO

JUDGE

In the presence of:-

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

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

.....**Court Clerk**