



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**DIVORCE CAUSE NO. 196 OF 2013**

**BETWEEN**

J W O .....PETITIONER

**AND**

J N O.....RESPONDENT

**JUDGEMENT**

1. On 6<sup>th</sup> May, 2000, the Petitioner, then a bachelor known as J W O, was lawfully married to the Respondent J N G then a spinster and a certificate Serial No. **[particulars withheld]** issued to them in accordance with the **Marriage Act Cap 150 Laws of Kenya**. The marriage was celebrated at St. Marks Church in Westlands Nairobi and thereafter they cohabited as husband and wife in Kaari, Mountain View and Syokimau areas of Nairobi respectively.
2. They were blessed with two issues of the marriage, who were aged as follows at the time of filing this cause:
  1. C N O born on 7<sup>th</sup> May 2003
  2. W N O born on 11<sup>th</sup> July 2005

Both the Petitioner and Respondent are domiciled in Kenya where the Petitioner is a Risk Management Officer with **[particulars withheld]** and the Respondent is the A Monitoring and Evaluation Officer with **[particulars withheld]**.

3. The Petition filed on 6<sup>th</sup> September 2013 is premised on grounds of desertion and cruelty. The acts of desertion are that on 13<sup>th</sup> June 2012, the Respondent deserted the matrimonial home never to come back and has completely shunned the Petitioner with no communication. Prior to that the Respondent had deserted the matrimonial home in April 2003 and moved to live with her sister in Lower Kabete, while on 29<sup>th</sup> January 2004, she had also left the matrimonial home and moved to live with the mother in Thika. On both occasions she came back after sometime.
4. The Petitioner also sets out the particulars of cruelty and avers that the Respondent is abusive, quarrelsome and nagging. The Petitioner further avers that the Respondent has denied him conjugal rights causing him embarrassment, anxiety and mental anguish. It is his contention that the Respondent has developed a habit of spending nights away from the matrimonial home with unknown persons and returning home in the late hours of the night and refusing to talk or discuss

anything with him.

5. The Petition is supported by the Petitioner's affidavit sworn on 6<sup>th</sup> September 2013 in which he reiterates the contents of his Petition. He therefore prays that the marriage celebrated between him and the Respondent be dissolved, and that they be granted the custody of the children jointly.
6. The Respondent was served with the Petition and she filed an Answer to the Petition dated 25<sup>th</sup> October 2013. The Respondent denies that she is not supportive of the Petitioner's projects and states that she was reluctant to move into their new matrimonial home in Syokimau because by then, their daughter was only one year old and she feared for their security there being no neighbouring household.
7. The Respondent denied having ever deserted the matrimonial home, and said that she had fled due to the violence meted upon her by the Petitioner. She stated that the environment in their matrimonial home was quite volatile, and was packed with hatred and insults coming from the Petitioner and was therefore not conducive to bringing up the children. The Respondent asserted that she had always allowed the Petitioner the enjoyment of his conjugal rights for the 12 years they lived together except on occasions when her health would not permit, but that on his part the Petitioner would force himself upon her sexually whether she was ready or not, even when it endangered her health such as when she had precarious pregnancies and was required to be on bed rest.
8. The Respondent denied the allegations of coming home late and stated that at times her job required her to carry out special assignments which necessitated her staying in the office later than normal. That on such occasions the Petitioner would lash at her when she arrived at home. The Respondent set out particulars of cruelty in the Cross-Petition and stated that the Petitioner had denied her warmth, care and attention in marriage and that the cruelty he had subjected her to, amounted to constructive desertion. She too urged the court to dissolve the marriage.
9. On 26<sup>th</sup> June 2014, the Deputy Registrar certified that the matter was suitable to proceed for hearing as a defended cause for one day in Nairobi. On 19<sup>th</sup> February 2015, both parties testified and each reiterated what they had set out in the Petition and answer to petition respectively. In particular the Respondent said she had supported the Petitioner by contributing to the loan repayments, to the payment of his tuition fee for his Masters programme and to the general upkeep of the family. Both the Petitioner and the Respondent confirm that this Petition and cross-petition have not been presented or prosecuted in collusion with one another, nor have they connived or condoned the acts of desertion and cruelty which each has complained of. They also certify that there have been no previous proceedings filed regarding the marriage.
10. From the foregoing it is evident that the marriage between the Petitioner and the Respondent has irretrievably broken down and has no chance of being salvaged. Attempts at reconciliation have failed and they have lived separately for the last three years. From the demeanor of the two parties in court the Respondent appeared to be down trodden and overwhelmed. In the premise I order as follows:
  - a. That the marriage celebrated between the Petitioner and the Respondent at the St. Marks Church in Westlands, Nairobi on 6<sup>th</sup> May, 2000, is hereby dissolved.
  - b. That matters concerning the custody and maintenance of the issues of the marriage shall be determined by the Children's Court.
  - c. That Decree Nisi dissolving the said marriage is hereby issued, to be made absolute thirty (30) days from the date of this judgment.
  - d. There shall be no orders as to costs.

**SIGNED DATED and DELIVERED in open court this 19<sup>th</sup> day of March 2015.**

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**L. A. ACHODE**

**JUDGE**