



**REPUBLIC OF KENYA**

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

**DIVORCE CAUSE NO. 183 OF 2014**

**BETWEEN**

**C J M W .....PETITIONER**

**AND**

**A W M.....RESPONDENT**

**JUDGEMENT**

1. On 20<sup>th</sup> August, 2005, the Petitioner, then a bachelor known as C J M W, was lawfully married to the Respondent A W M then a spinster and a certificate Serial No. 97899 issued to them in accordance with the **Marriage Act Cap 150 Laws of Kenya**. The marriage was celebrated in the Catholic Church in Ruaraka Parish Nairobi and thereafter they cohabited as husband and wife in Kiambu town between 2005 to 2010. They were blessed with one issue of the marriage, namely A M M born on 5<sup>th</sup> February 2008.
2. Both the Petitioner and Respondent are domiciled in Kenya where the Petitioner is an Analyst with Commercial Bank of Africa and the Respondent works with the United Nations, Gigiri Warwick Centre.
3. The Petition filed on 9<sup>th</sup> September 2014 is premised on grounds of cruelty. The acts of cruelty set out are that the Respondent is a person of violent temper, and has subjected the Petitioner to a constant tirade of insults and occasional use of foul language against him. The Petitioner further avers that the Respondent has denied him conjugal rights and has developed a habit of remaining away from home until late in the night and absenting herself from the matrimonial home without informing the Petitioner of her whereabouts. This, the petitioner states has caused him mental anguish and distress.
4. The Petitioner states that sometime in July 2010, he left the matrimonial home and moved to Kasarani Estate in Kiambu, as a result of the continuous misunderstandings between him and the Respondent. The Petitioner also states that since they got married, the Respondent has had several and very questionable liaisons and has exhibited detestable behaviour for a married woman. The Petitioner states that his attempts to dissuade her from such behaviour did meet much success.
5. The Petition is supported by the Petitioner's affidavit sworn on 9<sup>th</sup> September 2014 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 he be granted the custody of the only issue of the marriage.

6. The Respondent was served with the Petition and she filed an Answer to the Petition and cross petition dated 21<sup>st</sup> November 2014, in which she denies ever treating the Petitioner with cruelty and violence. The Respondent states that the issue of the marriage is a girl aged 6 years, currently in her custody and she is of sound health, and attending school. She loves her mother and has never been neglected. She further states that the Petitioner has been in an adulterous relationship with one C N with whom he has two children and he is currently cohabiting with another woman known as B W M with whom he has one child. She therefore claims that the Petitioner is not suited to have custody of a girl child, since this is an environment that will expose the issue of the marriage to immorality.
7. On 22<sup>nd</sup> January, 2015 the Deputy Registrar certified that the matter was suitable to proceed for hearing as a defended cause for one day in Nairobi. On 12<sup>th</sup> March 2015, counsels for both parties agreed that the Petitioner would testify while the Respondent's Answer to the petition and cross petition would be adopted in evidence. In his viva voce evidence the Petitioner confirmed that they had lived apart for over four years and that he was no longer interested in the marriage. The Respondent on her part denies that she has treated the Petitioner with cruelty as alleged in the petition. Instead she accused him of adultery and stated that he is currently cohabiting with one Beatrice Muchemi. She prays for the custody and maintenance of the issue of the marriage.
8. 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 cruelty and adultery which each has complained of. They also certify that there have been no previous proceedings filed regarding the marriage. They both pray that the marriage be dissolved.
9. 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. At the trial the parties entered into a consent concerning the custody and maintenance of the issue of the marriage as follows:
  - a. The custody of the child do remain with the mother.
  - b. The father shall have access on alternate weekends and half the school holidays while Public holidays shall be shared equally.
  - c. In relation to maintenance the father shall bear the following responsibilities:
    - i. To pay School fees and school related expenses which shall be paid directly to the service providers with adequate notice to the father;
    - ii. To pay medical cover and life insurance policy for the child as he has been doing;
    - iii. To be buying clothes for the child himself.
  - d. The mother shall take care of shelter and ensure that the child has food.

That being the matrix of this cause the only appropriate orders that this court can make are as hereunder:

- i. That the marriage celebrated between the Petitioner and the Respondent at Ruaraka Parish Nairobi on 20<sup>th</sup> August, 2005 is hereby dissolved.
- ii) Decree Nisi dissolving the said marriage is hereby issued, to be made absolute thirty (30) days from the date of this judgment.
- iii. There shall be no orders as to costs.

**SIGNED DATED** and **DELIVERED** in open court this **16<sup>th</sup> day** of **April 2015**.

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**L. A. ACHODE**

**JUDGE**