



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
DIVORCE CAUSE NO. 1 OF 2015

BETWEEN

R O MPETITIONER

AND

R N ORESPONDENT

JUDGMENT

1. The Petitioner, then a bachelor and the Respondent then a spinster, on or about 1997 started living together as husband and wife, which cohabitation between them was subsequently solemnized under the Kisii Customary law. On 23rd August 2002, they celebrated their marriage at the District Commissioner's office Central Kisii. A certificate of marriage serial Number *[particulars withheld]* was issued to them in accordance with the **Marriage Act (Cap 150 Laws of Kenya)**. The couple thereafter cohabited in Nairobi and in Kisii town at *[particulars withheld]*.

2. They are domiciled in Kenya and were blessed with three issues of the marriage as follows:

1. B O M born on 12th September 1998;
2. F O O born on 1st June 1996; and
3. A K born on 3rd January 2008

3. The Petition filed on 5th January 2015 is premised on grounds of cruelty and desertion. The Petitioner states that he and the Respondent enjoyed a happy union until around the year 2009 when the Respondent developed an inexplicable habit of throwing tantrums and deserting the matrimonial home at will. That the petitioner would be forced to fetch the Respondent from her home where she would retreat to following such tantrums.

4. The Petitioner also states that the Respondent had on several occasions abused him calling him useless and not worthy of his title as a man, husband and/or father, and that he is not the father to their children; that the Respondent neglected her matrimonial duties and in particular, denied the Petitioner his right to consortium; that during the currency of the marriage, the Respondent was constantly flirted and philandered with other men, a fact she admitted by disclosing that B O M is not the Petitioner's biological son notwithstanding that he was born during the currency of the marriage herein; that the Respondent has been publicly rude, unruly and of ungoverned temper and that she stalked the Petitioner while at his place of work.

5. The Petitioner states that sometime in 2010 the Respondent deserted the matrimonial home and has not returned to date. He has therefore asked the court to find that the marriage between the Petitioner and the

Respondent has broken down irretrievably. He prays for the dissolution of the marriage and confirms that this Petition has not been presented or prosecuted in collusion with the Respondent, nor has he connived or condoned the cruelty and desertion complained of. He also certifies that there have been no previous proceedings filed regarding the marriage, save for the Children's Case Number 537 of 2013 at Nairobi and Civil Appeal Number 57 of 2014 at the High Court of Kenya Nairobi.

6. The Respondent was served with the petition as is evidenced by the affidavit of service dated 10th March 2015 but did not file an answer to the Petition or a cross-Petition. On 16th April 2015 the Deputy Registrar certified that the matter was suitable to proceed for hearing as an undefended cause for one day in Nairobi. The Petitioner testified on 7th May 2015 and basically restated what he had set out in the grounds of the Petition and the supporting affidavit. The Respondent did not appear in court.

7. From the foregoing it is evident that the ill-fated marriage celebrated between the parties herein on 23rd August 2002 has irretrievably broken down and there is no will, at least on the part of the Respondent, to salvage it. For those reasons I make orders as follows:

- a. That the marriage celebrated between the Petitioner and Respondent at the District Commissioner's Office Central Kisii, on 23rd August 2002, is hereby dissolved.
- b. That Decree nisi dissolving the said marriage is hereby issued, to be made absolute thirty (30) days from the date of this judgment.
- c. There shall be no orders as to costs.

SIGNED DATED and DELIVERED in open court this **22nd** day of **May 2015**.

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L. A. ACHODE

JUDGE

In the presence ofAdvocate for the Petitioner

In the presence ofAdvocate for the Respondent