



**REPUBLIC OF KENYA**

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

**DIVORCE CAUSE NO. 58 OF 2014**

**P M M .....PETITIONER**

**VERSUS**

**S K N..... RESPONDENT**

**JUDGMENT**

1. The petitioner and respondent got married on 23<sup>rd</sup> October 2009 at Sheria House, Nairobi and cohabited together as husband and wife in Imara Daima at Nairobi, Kenya. The parties encountered various issues in their marriage and separated in 2009. The petitioner seeks dissolution of the marriage on grounds of adultery and cruelty.
2. She particularized her grounds adultery and cruelty in her petition as follows; that the respondent had a long standing relationship with C W N with whom he committed acts of adultery with. That he has been physically and verbally abusive since the celebration of the marriage and had even physically abused her in the year 2011 and 2012 and had without any justification thrown her out of the matrimonial property at 1.30. a.m. That the respondent is of intemperate disposition and became extremely volatile, unloving, belligerent and irresponsible embarrassing and traumatizing her. That due to the said reasons the marriage has irretrievably broken down reasons she prays for dissolution of the marriage between the petitioner and respondent, that the respondent be condemned to pay costs of this suit and any other relief the honorable court may deem fit to grant.
3. The Respondent filed an answer to the petition and cross petition dated 14<sup>th</sup> April 2014. He denied the petitioners allegations of adultery with the said C W N and alleged that she was the one who was adulterous and had sired a child R W K with the Respondent in the cross petition and have continued the said relationship beyond the extent of parental responsibility even after he and the petitioner got married. He denies the allegations of him being cruel towards the petitioner or physically or verbally being abusive to her and put her to strict proof thereof.
4. He sought to particularize the petitioner's cruelty and adultery against him as follows; That she left her matrimonial home in Imara Daima without any reasonable cause without explaining her whereabouts to the petitioner and withheld sexual intercourse with the respondent, that the petitioner was in cahoots with the mother to humiliate him by interfering with family affairs and that the petitioner has continued to expose their child L M to her male friends causing the respondent mental anguish. That she failed to give the respondent any love or care and consortium as expected in a marriage union and has distanced herself from him denying him his marital rights to companionship forcing him to become a social recluse due to her disparaging character. Further he alleges that the petitioner had on various occasion in her drunken stupor admitted to him her adulterous habits and the same has been confirmed by the petitioner from her whatsapp platform and that the respondent whom he refers to as K has made various visits to their matrimonial home and he learnt he was one of her many men. That any rescue to salvage the marriage has been shattered and all attempts reconciliation with one Mr. W was futile as she failed to turn up. The respondent seeks that the petitioner's petition be dismissed and all prayers be rejected with costs. The court grants them joint custody of the child of the marriage, that his cross petition be allowed and the marriage between him and the respondent be dissolved.
5. In her reply to answer and cross petition, the petitioner denied the allegations raised and reiterated the averments as laid out in her petition.
6. The cause was heard on 28/5/2015. The petitioner testified that the respondent was involved in a

long standing affair with one C W and in her efforts to separate them the respondent become very emotional and abusive. This brought to a lot of resentment and led to the breakdown of the marriage. That though their parents tried to reconcile them the same was not successful. That in 2012 he become very physically abusive and would at times struggle her and at some point she move out for 2 weeks when she came back the respondent threw her out she went to her brother's house but later got a house 100 meters from the respondent and C W moved into their matrimonial home. That both of them got hurt as they fought and the respondent was affected emotionally as she was also having an affair with a colleague at work.

7. The respondent reiterated the averments in his answer and cross petition adding that the petitioner left with almost all the property and left him with his 9 year old son and she now had a 5 month old son with another son which was evident that she committed adultery with other men when she was still married to him. He denied committing adultery and stated that C W was his former wife with whom they had a child with who was staying with her grandmother. He urged the court to allow his cross petition.
8. The petitioner alleges cruelty and adultery as her grounds for divorce. Cruelty, adultery and desertion are grounds for divorce provided for under the Marriage Act 2014. The petitioner alleges that the respondent was cruel to her and he verbally and physically abused her. Further that he was romantically involved with one C W however the respondent denies this and raised a cross petition alleging cruelty, desertion and adultery on the petitioner's part. In his testimony he stated that the petitioner was having an affair with various men and now has a 5 month old baby with another man. The petitioner in her testimony finally admitted to having an affair with a colleague at work while still married to the respondent. The instances narrated by the petitioner on verbal and physical abuse and also being thrown out of the house at wee hours of the night amounts to cruelty. However I find that the petitioner failed to prove her allegation of adultery by the respondent. The petitioner's petition therefore succeeds in part on grounds of cruelty. The petitioner did indeed admit to having an affair with a colleague at work and as such the respondent's cross petition succeeds on that ground. From the foregoing it is evident that the marriage between the parties has irretrievably broken down and there is no possibility of reconciliation. This court therefore dissolves the marriage between the Petitioner and the Respondent celebrated on 23rd October 2009. A decree nisi to issue forthwith and to be made absolute within 30 days. The issue of custody of child to be pursued in the Children's Court. Each party to bear its own costs. It is so ordered.

**Dated, signed and delivered this 25<sup>th</sup> day of June 2015.**

**R. E. OUGO**

**JUDGE**

In the presence of:-

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

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

.....**Court Clerk**