

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

DIVORCE CAUSE NO. 220 OF 2014

L.V.W.....PETITIONER

VERSUS

J.S.O.....RESPONDENT

JUDGMENT

1. The petitioner and the respondent are Kenyan citizens who got married on 25th February 2012 at a ceremony conducted by the Registrar of Marriages at Meriada Restaurant in Nairobi. They cohabited as husband and wife in Nairobi and were blessed with two children who were born prior to the marriage being solemnized. The parties have been living separately due to the nature of the respondent's work which has seen him posted in various countries, and is currently based in Addis Ababa, Ethiopia. The petitioner stays with their children in Nairobi.

2. The petitioner filed this petition on 13th November 2014 seeking the dissolution of the marriage on the ground of extreme cruelty. She stated in her oral evidence that their marriage had broken down irretrievably due to the respondent's cruelty. The respondent was said to have a drinking problem and has been to rehabilitation centres more than three times. His character changes when drunk and becomes verbally and emotionally abusive and has even tried to hit her while drunk. Furthermore, his drinking problem has made him incapable of taking care of the financial needs of the family which has caused her a lot of financial instability and stress. She stated that their children are scared of his drunken behaviour, as he breaks things and shouts when drunk. Lastly, that the respondent has not been able to offer her conjugal rights due to his alcohol addiction. This behaviour made her move out with their children from the matrimonial home in June 2014. In effort to salvage the marriage, the petitioner sought the help of an alcohol addiction specialist as well as marriage counsellor but these have yielded no fruits due to the respondent's lack of commitment in attending the sessions. Family efforts to reconcile them have also been futile. It is for these reasons that she prayed that the marriage be dissolved.

3. Though the respondent entered appearance, he did not file an answer to the said petition but instead gave his oral testimony in court. He testified that he did not contest the petition as their marriage had broken down beyond repair and that, after thinking long and hard, he would grant the petitioner the happiness she desires. He said nothing about his said drunken behaviour, although he denied that he was either abusive or neglectful.

4. Both parties agree that this marriage has broken down beyond repair. I find that the marriage has not worked owing to the respondent's drunken and abusive behaviour, and the fact that he has done little to invest in it. The petitioner has on the other hand tried hard to salvage it but has received no cooperation from the respondent. This is why I accept that the respondent has been emotionally cruel to both the petitioner and the children. The fact that he has not been able to offer conjugal rights to the petitioner is further evidence of that cruelty.

5. I grant the petition with costs. The marriage between the petitioner and the respondent is hereby dissolved. *Decree Nisi* shall issue immediately, and shall become absolute after 30 days.

DATED and DELIVERED this 17th day of September 2015

A.O. MUCHELULE

JUDGE