



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
FAMILY DIVISION
DIVORCE CAUSE NO. 242 OF 2014

J M M.....PETITIONER

VERSUS

C W N.....RESPONDENT

JUDGMENT

1. The petitioner and the respondent got married on 10th June 2000 at [particulars withheld] Church under the **African Christian Marriage and Divorce Act (Cap. 151)**. The marriage was blessed with three children as follows:-
 - a. E W born on 10th September 2002;
 - b. J M born on 18th May 2004; and
 - c. T W born on 23rd April 2013.
2. On 17th December 2014 the petitioner filed this petition seeking the dissolution of the marriage, and the custody of the children. The petition was grounded on desertion and cruelty. The respondent filed an answer and cross-petitioned for divorce on grounds of adultery and that the marriage has irretrievably broken down. She sought the custody of the children.
3. The petitioner and respondent each gave evidence. No witnesses were called.
4. There is no dispute that on 27th September 2014 the respondent left the matrimonial home. She left with the three children. She now stays with the children at [particulars withheld]. The petitioner stated that she left without his knowledge. He came home on this day to an empty house. It is later that he traced where the respondent had moved to. They have since lived apart, although she allows him to see the children. The respondent stated that her leaving was a culmination of persistent requests by the petitioner that she leaves him. He had been telling her that he was tired of her. She testified that the petitioner had throughout the marriage failed to provide food or clothing for the children. Up to now, she said, he provides no assistance to the family. She stated that the house in which they were staying was one-roomed, but she has now moved to a two bed roomed more convenient and comfortable house for her and the children. She had always been asking that they move to a bigger house but the petitioner would not listen. She

stated that the children are a lot happier in their present environment.

5. The petitioner testified that one of the sticking issues in the marriage was that the respondent would variously deny him conjugal rights. She denied this, and responded that the fact that they have three children means that they had always had a sexual relationship. However, now that they had children and a maid in one room this was not a convenient and private arrangement for the demands of the petitioner. The petitioner states that the respondent would not do household chores, especially after she went to University and got a degree. She denied the allegation. Each party stated that the marriage cannot be salvaged. They are no longer interested in the marriage.
6. I find that the couple no longer lives together. According to either of them, the marriage is beyond repair. Each wants a divorce. I order the dissolution of the marriage.
7. As for the custody of the children, it is clear that they live with the respondent. There is no complaint about the way she is bringing them up. She is their biological mother. The children are 13, 11 and 2, respectively. The first two are in school. The petitioner has access to them. Under **section 4** of the **Children Act (Cap. 141)** it is provided that in any matter concerning children the court has to ensure that their best interests shall be a primary consideration. In the absence of exceptional circumstances, the custody of young children will usually be given to their mother (**G.V.G. [2008]1 KLR (G & F) 497**). I therefore grant the custody of the three children to the respondent. However, the petitioner shall have unlimited access to the children.
8. This is a family dispute. Each side shall bear own costs.

DELIVERED and DATED at NAIROBI this 29th October 2015.

A.O. MUCHELULE

JUDGE