

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO.127 OF 2007

BETWEEN

D M M.....PETITIONER

AND

A S H M.....RESPONDENT

JUDGEMENT

1. The petitioner in this matter married the respondent on 23rd December 2000 at a ceremony at the ACK St. Stephen's Church Taita Taveta. A certificate of marriage No. *[particulars withheld]* was duly issued, copy of which is attached to the petition filed in court in this cause. The couple was blessed with one issue, L M M *[minor]*, born in 2002.
2. The petition herein was filed in court on 2nd October 2007. In it the petitioner accuses the respondent of cruelty. He avers that she deserted the matrimonial home, neglected the child of the marriage, showed lack of respect to him and totally abdicated her responsibilities to the family as wife and mother.
3. The petition and notice to appear were served on the respondent, and she entered appearance, and filed an answer to the petition and a cross-petition. She denied the allegations levelled against her by the petitioner in his petition, cross petitioned for divorce on the grounds of cruelty, adultery and desertion. she avers that the petitioner in the course of the marriage humiliated her by insulting her in public, he was an abuser of hard drugs such as bhang, he frequently beat her, he failed to provide for his family, he forced the respondent out of the matrimonial home, showed no love and affection to her and neglected his duties husband and father. The petitioner is also accused of committing adultery with women known and unknown to the respondent, but those she knew are not named nor made co-respondents. He is alleged to have had confessed to an affair with their house help and sexual liaisons with an unnamed girlfriend. She has also stated that the petitioner deserted the respondent and the child of the marriage at his father's home and has since then showed no interest in them.
4. The matter was cleared on 3rd April 2008 for hearing, and was certified to proceed as a defended cause. It was heard on 7th February 2013. The petitioner attended court and testified in support of his petition, but the respondent was not in court.
5. The petitioner testified that the respondent left the matrimonial home in October 2003 never to come back. He stated that the parties have since never communicated at all as husband and wife. He accused her of committing adultery and of having clearly moved on with her life. He conceded that the marriage has completely broken down. He informed the court that custody of the issue of the marriage was resolved by a Mombasa court.
6. It is clear from the evidence that there is no marriage. There is clearly no love lost between the parties. The marriage exists only on paper. It appears to me that the marriage between the parties has completely broken down. It would also appear to me that there has been no collusion between the petitioner and the respondent in bringing these proceedings. There is also no evidence that the petitioner condoned the desertion proved at the hearing.

7. I will allow the petition dated 25th September 2007, and dissolve the marriage celebrated between the petitioner and respondent on 23rd December 2000. Each party shall bear their own costs.
8. Decree *nisi* shall issue forthwith, to be made absolute after thirty (30) days.

DATED, SIGNED and DELIVERED at NAIROBI this 31st DAY OF January, 2014.

W. MUSYOKA

JUDGE