

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO.147 OF 2001

BETWEEN

E K I M.....PETITIONER

AND

S M M.....RESPONDENT

JUDGEMENT

1. The petitioner in this matter married the respondent on 19th November 1981 at a ceremony at the PCEA Church Makupa in Mombasa. 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 thereafter cohabited at Voi, Ndara Ranch and Nairobi.
2. The petition herein was filed in court on 15th August 2001. In it the petitioner accuses the respondent of cruelty, irresponsibility and adultery.
3. The petition and notice to appear were served on the respondent, and he entered appearance, and filed an answer to the petition and a cross-petition. He denies the allegations levelled against him by the petitioner in her petition, and cross petitioned for divorce on the grounds of cruelty and desertion. He avers that the petitioner continuously treated him and the child of the marriage with cruelty. He has also stated that the petitioner deserted the matrimonial home and has been living in places that the respondent was not aware of.
4. The matter was cleared for hearing, and was certified to proceed as a defended cause. The matter was heard by Njagi J on 17th May 2012 and 12th July 2012. Both parties testified and gave vent to the allegations made in their respective pleadings.
5. The petitioner testified on 17th May 2012. She told the court that the respondent had been cruel to her. She gave a detailed account of the various acts of cruelty meted on her on diverse dates. She also gave evidence on the neglect of the child of the marriage by the respondent. She did not lead any evidence on adultery.
6. The respondent testified on 12th July 2012. He denied being cruel to the petitioner. He also testified that he had not neglected the child of the marriage, but rather that it was the petitioner who kept the child away from him.

6A. I have anxiously gone through the evidence. I am

satisfied that there were acts of cruelty directed at the petitioner by the respondent. I also find that the alleged desertion by the petitioner was occasioned by the cruelty she suffered from the respondent. The evidence on cruelty has reached the threshold set in *Meme –vs- Meme* (1976) KLR 13.

7. There is clearly no love lost between the parties. It appears to me that the marriage between the parties has completely broken down. The marriage exists only on paper. 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.

8. I will allow the petition dated 2nd August 2001 on the grounds of cruelty and dissolve the marriage celebrated between the petitioner and respondent on 19th November 1991. Each party shall bear their own costs.

9. 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