

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 9 OF 2012

E K K.....PETITIONER

VERSUS

T M K.....RESPONDENT

J U D G M E N T

The Petitioner and the Respondent were on 5th September 1992 married under the **Marriage Act**. The marriage was celebrated at Our Lady Queen of Peace Catholic Church, Nairobi. After the celebration of the said marriage, the Petitioner and the Respondent cohabited together as husband and wife in various estates in Nairobi. The marriage has been blessed with two (2) issues born on 27th January 1993 and 1st October 1994 respectively. The Respondent states that there is an adopted child of the marriage named M A K K born on 21st May 1996. According to the Petitioner, since the celebration of the marriage, Respondent has treated him with cruelty. He sets out the particulars of cruelty in his petition for divorce. In particular, he alleged that the Respondent had denied him his conjugal rights, was abusive, anti-social, not submissive and exhibited violent tendencies towards the Petitioner. The Petitioner states that the Respondent tricked him into moving out of the matrimonial home at *[particulars withheld]* Estate, Nairobi in April 2004. According to the Petitioner, he has not returned to the matrimonial home ever since. The Petitioner was of the opinion that due to the Respondent's behaviour, the marriage had irretrievably broken down with no possibility of salvage. He therefore asks the court to grant his petition for divorce and also award him costs of the petition.

In Response to the petition for divorce, the Respondent filed an answer to the petition and cross petitioned to be divorced from the petitioner. In the answer to the petition, the Respondent denied the allegations made in the petition for divorce by the Petitioner and put the Petitioner to strict proof thereof. In particular, she denied the particulars of cruelty put forward by the Petitioner. She put the Petitioner to strict proof thereof. The Respondent stated that the Petitioner left the matrimonial home without notice using his alleged sexual inhibitions as an excuse.

In her cross petition for divorce, the Respondent averred that since the celebration of the said marriage the Petitioner has been guilty of desertion. She averred that the Petitioner deserted the matrimonial home since 1st April 2004. She averred that the Petitioner moved to Kiambu Road and was now cohabiting with another woman. She accused the Petitioner of committing adultery with one I W with whom he is said to have sired two issues aged 5 years and 1 year respectively. She accused the Petitioner of denying her conjugal rights. For the above reasons, the Respondent was of the opinion that her marriage to the Petitioner had irretrievably broken down with no possibility of salvage. She therefore urged the court to grant her cross petition for divorce.

This matter was mentioned before this court on 24th January 2014. The court agreed to write the judgment on the basis of proceedings before Mugo J. This court has carefully read the pleadings filed by the Petitioner and the Respondent in this case. It has also read the proceedings before Mugo J. The issue for determination is whether the Petitioner and the Respondent established their respective case to enable this court grant the order for divorce that they crave for. When he testified before court, the Petitioner reiterated the contents of his petition for divorce. He told the court that in April 2004 the Respondent told him that they had to move out of the matrimonial home in *[Particulars withheld]* Estate, Nairobi. He told the court that he then rented out an apartment in Westlands, Nairobi and moved there. According to the Petitioner, the Respondent never went to live with him in Westlands. The Petitioner stated that the

Respondent remarried. The Petitioner testified that he has been separated from the Respondent since 2004. The Respondent admitted to committing adultery with the said I W. He also admitted to having sired children out of wedlock with the said woman. He stated that he still fulfills his parental responsibilities towards the issues of the marriage.

On her part, the Respondent reiterated the contents of her answer to the Petitioner's petition and cross petition. She told the court that she realized that the Respondent had a sexual problem in 1994 after the birth of their second child. The Respondent testified that they lived in separate bedrooms for five (5) years. She stated that the Petitioner had also engaged in adulterous relationships making her life intolerable. For these reasons, the Respondent was also of the view that her marriage to the Petitioner had irretrievably broken down.

Having carefully evaluated the evidence adduced by the Petitioner, it was clear to this court that indeed the marriage between the Petitioner and the Respondent had irretrievably broken down. A marriage where conjugal rights are not exercised for more than ten (10) years is indeed doomed. The testimony of the Petitioner and the Respondent clearly showed that they no longer relate as husband and wife. This court is of the view that the marriage between the Petitioner and the Respondent has irretrievably broken down with no possibility of salvage. The Petitioner and the Respondent have been separated for more than ten (10) years. In the premises therefore, this court will grant petition for divorce.

Prior to the court reserving the case for judgment, the Petitioner and the Respondent agreed by consent that the Respondent shall continue residing on the matrimonial property on LR. No. Nairobi/Block ***[particulars withheld]*** Nairobi, South B and collect the rental income therefrom. The petitioner also agreed that he shall continue supporting the children of the marriage. In the premises therefore, the marriage solemnized on 5th September 1992 at Our Lady of Peace Catholic Church in Nairobi between the Petitioner and the Respondent is hereby dissolved. Decree nisi dissolving the said marriage is hereby issued. The decree nisi shall be made absolute thirty (30) from the date of this judgment. There shall be no orders as to costs.

DATED AT NAIROBI THIS 14TH DAY OF FEBRUARY, 2014

L. KIMARU

JUDGE