

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 5 OF 2012

S M RPETITIONER

VERSUS

P H S.....RESPONDENT

J U D G M E N T

The Petitioner and the Respondent were married on 29th July 2005 under the Hindu traditional marriage rites. They formalized their marriage on 14th February 2007 at the Registrar's Office in Nairobi. The marriage has not been blessed with any issues. In his petition for divorce, the Petitioner complains that since the celebration of the said marriage the Respondent had treated him with cruelty. In the particulars of cruelty, the Petitioner *inter alia*, accused the Respondent of being verbally abusive, denying him his conjugal rights and consortium, refusing to have children, of withholding love and affection, and refusing to have a good relationship with his parents. He further averred that the Respondent had shown him utter contempt and lack of commitment towards her matrimonial commitments. The Petitioner states that the Respondent left the matrimonial home on 8th June 2011. Since then, she had not returned to the said matrimonial home. For these reasons, the Respondent was of the view that his marriage to the Respondent had caused him to suffer mental distress which could only be remedied by this court granting his petition for divorce. He also asks the court to award him his costs of the petition.

When the Respondent was served, she did enter appearance and filed an answer to the petition and cross petitioned to be divorced from the Petitioner. In answer to the Petition, the Respondent denied the allegations made by the Petitioner which was to the effect that she had been guilty of the matrimonial offence of cruelty. The Respondent cross petitioned for divorce. In her cross petition for divorce, the Respondent accused the Respondent of treating her with cruelty. She accused the Petitioner of denying her conjugal rights, being an irresponsible husband, neglecting his responsibilities as a husband, verbally abusing her and mistreating and humiliating her. The Petitioner further accused the Petitioner of committing adultery with various women. According to the Respondent, the Petitioner admitted that he no longer had feelings for her. For these reasons, the Respondent and the Petitioner were separated in May 2011. Since then, the Petitioner and the Respondent have been living separately. In the premises therefore, the Respondent urged the court to dismiss the Petitioner's petition and grant her cross-petition for divorce. She also urged the court to order the Respondent to pay maintenance and alimony.

During the hearing of the Petition for divorce, this court heard evidence adduced by the Petitioner in the presence of counsel for the Respondent. He basically reiterated the contents of his petition for divorce. He urged the court to dissolve the marriage since every effort at salvaging it had failed. The Respondent opted to give no evidence on the issue of divorce. This court has carefully considered the facts of this divorce cause. It was clear from the pleadings filed by both parties and also by the evidence adduced by the Petitioner in court that indeed the marriage between the Petitioner and the Respondent had indeed irretrievably broken down. The accusations and counter accusations of cruelty and adultery in the petition and cross petition should thus be seen in this context. The Petitioner and the Respondent are no longer living together. They have been separated for nearly three (3) years. For the above reasons, it was clear to this court that indeed there is no possibility that the marriage between the Petitioner and the Respondent can be salvaged.

I grant the Petition for divorce. The marriage celebrated on 14th February 2007 between the Petitioner and the Respondent at the Registrar's Office in Nairobi is hereby dissolved. Decree nisi dissolving the

said marriage is hereby issued. The decree nisi shall be made absolute thirty (30) days from the date of this judgment. There shall be no orders as to costs. It is so ordered.

DATED AT NAIROBI THIS 28TH DAY OF MARCH, 2014

L. KIMARU

JUDGE