

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO.85 OF 2009

O C O..... PETITIONER

VERSUS

E ORESPONDENT

J U D G M E N T

The Petitioner and the Respondent were on 31st October 1998 married at Consolata Church in Nairobi. The marriage was celebrated under the **Marriage Act**. After the celebration of the said marriage, the Petitioner and the Respondent cohabited together as husband and wife in Nairobi. They were blessed with two (2) children, twins born on 26th August 2002. According to the Petitioner, the marriage has not been a happy one. He accuses the Respondent of committing the matrimonial offences of cruelty and desertion, particulars whereof he lists in the petition for divorce. In particular, he pleaded that the Respondent deserted from the matrimonial home on 3rd September 2003 and had since then not returned to the said matrimonial home. It was for these reasons that the Petitioner asked the court to dissolve the marriage. He asked the court to grant him joint custody of the children of the marriage. He asked to court to make appropriate orders as to costs.

When the Respondent was served, she duly entered appearance and filed a reply to the petition for divorce. She further cross-petitioned to be divorced from the Petitioner. She denied the allegations of cruelty and desertion made in the petition for divorce. She averred that it was the Petitioner’s acts of cruelty including physical assaults that informed her decision to leave the matrimonial home. She accused the Petitioner of treating her with disrespect to the extent that her self-esteem as a woman had been undermined. She stated that the Petitioner had failed to perform and neglected his responsibility both as a parent and as a husband by not financially supporting the family. She accused the Petitioner of committing acts of adultery with another woman with whom he had sired a son. In her cross-petition, the Respondent set out the particulars of cruelty. In particular, she stated that the Respondent had committed acts of adultery with various women and also failed to support her during the period of her pregnancy. All these acts of cruelty caused the Respondent to suffer mental anguish that resulted in the Respondent suffering from clinical depression. It was these reasons that the Respondent was of the view that her marriage to the Petitioner had irretrievably broken down with no possibility of salvage. She prayed that the marriage be dissolved. She further asked the court to grant her custody of the children of the marriage. She prayed for an order of the court for the Petitioner to be compelled to maintain the children of the marriage and further pay her alimony. She asked the court to pay her the costs of the suit. The Petitioner filed an answer to the cross-petition. He denied all the allegation made in the cross-petition and put the Respondent to strict proof thereof.

During the hearing of the petition, the parties agreed by consent for all issues relating to the custody and maintenance of the children of the marriage to be transferred to the Children’s Court for hearing and determination. The Respondents abandoned her prayer for alimony. It was agreed that each party was to bear their own costs. The cross-petition of the Respondent was amended to include paragraph 19A which states as follows:

“The Petitioner constructively deserted the Respondent since 2003”.

The Respondent testified during the hearing of the petition. She reiterated the contents of the cross-petition. She testified that she left the matrimonial home 2003 due to the Petitioner's adulterous and violent nature. Cohabitation had not resumed since then. No attempt at reconciliation had been successful. In her opinion, the marriage had irretrievably broken down with no possibility of salvage. The Petitioner did not adduce any evidence during the hearing of the petition.

This court has carefully considered the facts of this petition for divorce. It was clear from the pleadings filed and the evidence adduced during the hearing of the petition that the marriage of the Petitioner and the Respondent had indeed irretrievably broken down with no possibility of salvage. The Petitioner and the Respondent have been separated since 2003. It was apparent that the Petitioner has moved on with his life. He is now in another relationship. All efforts at reconciliation have not borne any fruit. In the premises therefore, this court formed the opinion that the Respondent established the matrimonial offence of desertion. It is just and fair for the parties to be allowed to move on with their respective lives.

The marriage celebrated on 31st October 1998 at Consolata Church 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) days from the date of this judgment. There shall be no orders as to costs. It is so ordered.

DATED AT NAIROBI THIS 21ST DAY OF MARCH 2014

L. KIMARU

JUDGE