



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**DIVORCE CAUSE NO. 8 OF 2008**

**O O A.....PETITIONER**

**VERSUS**

**H O OK.....RESPONDENT**

**JUDGMENT**

The Petitioner and the Respondent were on 26<sup>th</sup> June 1992 married at the Registrar’s Office in Nairobi. The marriage was celebrated under the **Marriage Act**. After the celebration of the said marriage, the Petitioner and the Respondent resided in various estates within Nairobi until January 2008 when they were separated. The marriage had been blessed with two (2) children born on 4<sup>th</sup> July 1992 and 5<sup>th</sup> April 1997. According to the Petitioner, the marriage has not been a happy one. She accused the Respondent of committing the matrimonial offences of cruelty and adultery. The particulars of the said offences were set out in the petition for divorce. The Petitioner pleaded that the Respondent had been guilty of constructive desertion from the matrimonial home since January 2008. The Petitioner averred that although reconciliation had been attempted, it had failed. In her opinion, her marriage to the Respondent had irretrievably broken down with no possibility of salvage. She therefore urged the court to grant her petition for divorce, grant her custody of the children of the marriage, compel the Respondent to contribute to the maintenance of the children, and finally order the Respondent to grant her exclusive occupation of an apartment (Apartment No.B3, Lantana Gardens) which they jointly own. She further prayed to be awarded costs of the suit.

When the Respondent was served, he duly entered appearance. He filed an answer to the petition. He also cross-petitioned to be divorced from the respondent. In his answer to the petition, he denied the allegation made in the petition that he was guilty of the matrimonial offences of cruelty and adultery. In that regard, he put the Petitioner to strict proof thereof. On his part, he accused the Petitioner of committing acts of cruelty against him. He set out the said particulars of cruelty in his answer to the petition. He his cross-petition, he averred that since the celebration of the said marriage, the Petitioner had committed various acts of cruelty. He further pleaded that the Petitioner had constructively deserted from the matrimonial home since January 2008. Since then, they have been separated. They have not resumed cohabitation. The Respondent was of the view that his marriage to the Petitioner was not capable of being salvaged. He therefore urged the court to grant his cross-petition for divorce. He asked the court to grant both of the parties joint custody of the children of the marriage. In the alternative, he prayed that he be granted limited visitation rights. He urged the court to dismiss the petition for divorce and grant his cross-petition for divorce. He further pleaded with the court to grant him costs of the suit.

During the hearing of the petition, the following consent was entered between the Petitioner and the Respondent:

***“With regard to maintenance:***

- I. ***The issue of maintenance be subjected to further discussion between the parties in the presence of the advocates. Mention on 10<sup>th</sup> May 2013 with a view to recording a settlement.***
- II. ***LR. No.[particulars withheld](Lantana Gardens), the Respondent’s share therein to be surrendered and registered in the names of the children in equal shares.”***

The parties did not record the consent in regard to the issue of maintenance. The court presumes that the

parties have reached some form of understanding in that regard. It is only the Petitioner who testified during the hearing of the petition. She reiterated the contents of her petition for divorce. She told the court that she left the matrimonial home in January 2008 when the conditions within the marriage became unbearable. She however returned to the matrimonial home subsequently thereafter after the Respondent had left the matrimonial home. It was her testimony that the marriage had irretrievably broken down with no possibility of salvage. She urged the court to grant her petition for divorce. The Respondent did not offer any evidence during the hearing of the petition.

This court has carefully considered the facts of this petition for divorce. It has also considered the pleadings filed by the parties herein in support of their respective opposing positions. It was clear to this court that indeed the marriage of the Petitioner and the Respondent has irretrievably broken down with no possibility of salvage. The Petitioner and the Respondent each accused the other of committing acts of cruelty. In the detailed particulars, it was apparent to this court that the Petitioner and the Respondent can no longer live together as husband and wife. They have been separated since January 2008. Since then, they have not resumed cohabitation. They are not anxious to resume such cohabitation. It more than five (5) years since they were so separated. If reconciliation were to be successful, then the same should have been attempted during the intervening period. This court will therefore grant the petition for divorce.

In the premises therefore, the marriage celebrated between the Petitioner and the Respondent on 26<sup>th</sup> June 1992 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. Both children of the marriage are now adults. However, the parties herein should agree on their education and maintenance, and in case of disagreement, they shall be at liberty to move this court. There shall be no orders as to costs.

**DATED AT NAIROBI THIS 21<sup>ST</sup> DAY OF MARCH 2014**

**L. KIMARU**

**JUDGE**