

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 25 OF 2011

A M K.....PETITIONER

VERSUS

A A M.....RESPONDENT

J U D G M E N T

The Petitioner and the Respondent were married on 5th February 1998 at the Registrar's Office in Mombasa. The marriage was celebrated under the **Marriage Act**. The marriage was blessed with two (2) children born respectively on 2nd August 2000 and 20th December 2001. After the celebration of the said marriage, the Petitioner and the Respondent cohabited together as husband and wife in Mombasa and Nairobi. According to the Petitioner, since the celebration of the said marriage, the Respondent had treated him with cruelty. He sets out the particulars of cruelty in his petition for divorce. The said instances of cruelty include denial of conjugal rights, disrespect, arrogance, failure to consult with the Petitioner concerning the affairs of the family and failing to financially contribute towards maintenance of the family. He finally stated that the Respondent had been guilty of desertion. The Petitioner accused the Respondent of staying away from the matrimonial home for extended periods of time. In the premises therefore, the Petitioner pleaded with the court to grant his petition for divorce and grant him custody of the children of the marriage.

The Respondent was served with the petition for divorce. She did not enter appearance. She did not file any papers in answer to the said petition. The Deputy Registrar of this court issued a certificate certifying that this divorce cause be heard as undefended divorce cause. During the hearing of the cause, this court heard the oral evidence of the Petitioner. He essentially reiterated the contents of his petition for divorce. He told the court that he had experienced hostility and cruelty in the marriage. He testified that the Respondent had on several occasions made attempts to stab him with a knife. He accused the Respondent of taking the unilateral decision to enroll for a degree programme thereby denting the family's scarce financial resources. According to the Petitioner, all efforts at reconciliation have not borne fruit. Because of their irreconcilable differences, the Respondent deserted the matrimonial home together with the children of the marriage. In the circumstances, the Petitioner urged the court to grant his petition for divorce. This court had carefully considered the said grounds of divorce. It was clear to this court that that the marriage between the Petitioner and the Respondent had indeed irretrievably broken down. Further, the fact that the Respondent has deserted the matrimonial home is sufficient proof that she is no longer interested in the marriage. The evidence adduced by the Petitioner was uncontroverted. This court therefore holds that the Petitioner proved to the required standard of proof on a balance of probabilities that indeed he is entitled to the prayer for divorce on the ground of desertion as sought in his petition.

In the premises therefore, the marriage celebrated on 5th February 1998 at the Registrar's Office in Mombasa, 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. On the issue of custody and maintenance of the children, the Petitioner shall be at liberty to file an appropriate case before the Children's court. There shall be no orders as to costs. It is so ordered.

DATED AT NAIROBI THIS 4TH DAY OF APRIL, 2014

L. KIMARU

JUDGE