

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 212 OF 2012

L C K.....PETITIONER

VERSUS

P J WRESPONDENT

JUDGMENT

The Petitioner and the Respondent were on 27th April 2002 married under the **Marriage Act**. The marriage was celebrated at the Holy Family Basilica, Nairobi. The marriage was blessed with two (2) children born respectively on 25th September 2003 and 27th October 2008. After the celebration of the marriage, the Petitioner and the Respondent cohabited together as husband and wife in Nairobi. In her petition, the Petitioner states that the Respondent is guilty of desertion. She states that in April 2011, the Respondent deserted the matrimonial home and has since then not returned to the said matrimonial home. The Petitioner also accuses the Respondent of treating her with cruelty. She sets out the particulars of cruelty in her petition for divorce. The said instances of cruelty include physical assault; verbal abuse; humiliation; frustration; causing the Petitioner mental anguish by threatening her; failure to provide for the Petitioner and the children; neglect of his responsibility both as husband and father, denial of conjugal right to the Petitioner and engagement in extra marital affairs. The Petitioner also deponed that the Respondent had falsely accused her of engaging in extra marital affairs. It is for the above reasons that the Petitioner urged the court to grant her petition for divorce and make a further order with respect to custody and maintenance of the children of the marriage.

The Respondent was served with the petition for divorce. He entered appearance. However, he did not file any papers in answer to the petition. The Deputy Registrar of this court issued a certificate certifying this cause as a suitable one to be disposed of by this court as an undefended divorce cause. At the hearing of this petition, this court heard oral evidence adduced by the Petitioner. She essentially reiterated the contents of her petition for divorce. She testified that she had been separated from the Respondent since 2011 when the Respondent left the matrimonial home to reside in Eldoret. She testified that the Respondent stopped visiting the family in the year 2011. She told the court that her efforts to communicate with the Respondent had failed. The Respondent left the two (2) children of the marriage under her custody. According to the Petitioner, since the Respondent deserted the matrimonial home, he had neglected her welfare and that of the children of the marriage. The Petitioner testified that the Respondent had moved on and now has another family. According to the Petitioner, all efforts at reconciliation had not borne fruit and therefore the only thing remaining is for this court to dissolve the marriage.

This court has carefully considered the facts of this case. It was clear to this court that the marriage between the Petitioner and the Respondent had irretrievably broken down that it was incapable of being salvaged. It was apparent from the testimony of the Petitioner (which was uncontroverted), that the Respondent has indeed moved on with his life. He now resides in Eldoret. The incidences of cruelty as narrated by the Petitioner, taken in totality, established to the required standard of proof on a balance of probabilities the matrimonial offence of cruelty. The Petitioner and the Respondent are no longer living together. They have been separated for nearly three (3) years. This court formed the view that indeed the matrimonial offences of desertion and cruelty have been proved to the required standard of proof on a balance of probabilities. This court will grant the petition for divorce.

In the premises therefore, the marriage celebrated between the Petitioner and the Respondent on 27th

April 2002 at the Holy Family Basilica, 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 the Petitioner and the Respondent shall have joint custody of the children. The Petitioner shall have the physical custody of the children whereas the Respondent shall have unlimited access to them. As regards the issue of maintenance of the children, the same shall be canvassed at the Children's court. It is that court which has jurisdiction in the first instance to consider such disputes. There shall be no orders as to costs. It is so ordered.

DATED AT NAIROBI THIS 3RD DAY OF APRIL, 2014

L. KIMARU

JUDGE