

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

DIVORCE CAUSE NO. 52 OF 2012

B N O.....PETITIONER

VERSUS

E W M.....RESPONDENT

JUDGMENT

The petitioner **B N O** filed this petition dated 25th September, 2012 seeking the dissolution of marriage in the High Court at Mombasa. The same was fully served upon the respondent **E W M** who filed her reply and cross-petition dated 3rd December, 2012 on 7th December, 2012. The matter was heard by way of *vive voce* evidence on 17th February, 2014. On that dated **MS. ISOE** for the petitioner applied to withdraw the petition. This was allowed thus the hearing proceeded only with respect to the cross-petition. **MS. KIPSANG** Advocate appeared for the respondent.

The undisputed facts of the case are that the petitioner and the respondent got married on 27th January, 2007 at the Seventh Day Adventist Church in Lang'ata. A copy of the marriage certificate serial No. **[Particulars withheld]** is proof of the fact of the marriage. Subsequently the couple set up home in **[Particulars withheld]** area of Mombasa. The petitioner was working with the **[particulars withheld]** whilst the respondent worked as a shop attendant at a cosmetic store. Their union was blessed with one child a son born on 25th June, 2009. The boy named E M is now 5 years old.

In her evidence the respondent told the court the petitioner began to sleep out of the matrimonial home and he also began to engage in adulterous affairs. The respondent names one J O their best maid and one J a university student as the women with whom the petitioner was committing adultery. I note that counsel for the petitioner did not raise any challenge to this testimony whilst cross-examining the respondent nor was any serious attempt made to controvert that evidence. Annexed to the respondent's reply are a series of intimate e-mail messages between the petitioner and this J O. No attempt has been made to deny these e-mails. The respondent has also alleged that the petitioner physically assaulted her and pushed her out of a moving vehicle. She reported the matter to Changamwe police station. She has annexed a copy of a P3 form issued to her on 10th August, 2009. The annexed medical report indicates that upon examination the respondent was found to have bruises on her person once again the petitioner does not deny this allegation.

The respondent told the court that the petitioner is now co-habiting with one E S with whom he has two (2) children. The petitioner has not denied this. This is clear proof of adultery as the petitioner moved to live with this woman during the subsistence of his marriage to the respondent. It is telling that the petitioner opted to withdraw his petition, thus the same was not prosecuted at all. Although he had accused the respondent of desertion, it is quite clear that the climate which existed in the matrimonial home was not conducive to the respondent's continued stay therein. The petitioner effectively drove her away by his actions. No challenge has been made to the respondent's allegations of cruelty and adultery leaving me to conclude that these allegations are true. Adultery and cruelty are both valid grounds for a divorce. I have no doubt that marriage has broken down. Indeed the fact that the petitioner poses on facebook with a 'new family' is proof of this fact. I find that it was the petitioner's actions that led to that break-down. I therefore allow the cross-petition and I award costs to the respondent. Decree nisi to issue to be made absolute within three (3) months of today's date.

Dated and delivered in Mombasa this 16th day of June, 2014.

M. ODERO

JUDGE

In the presence of:

No Appearance by either party

Court Clerk Mutisya