



**REPUBLIC OF KENYA**

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

**DIVORCE CAUSE NO. 131 OF 2013**

**L W M.....PETITIONER**

**VERSUS**

**G M N.....RESPONDENT**

**J U D G M E N T**

The Petitioner and the Respondent were married on 22<sup>nd</sup> December 2006 at the District Commissioner's Office in Eldoret. The marriage was celebrated under the **Marriage Act**. After the celebration of the marriage, the Petitioner and the Respondent cohabited together as husband and wife in Nairobi. The marriage has been blessed with one (1) child. According to the Petitioner, since the celebration of the marriage, the Respondent has treated her with cruelty. In particular, she accused the Respondent of being verbally abusive, of withholding love and affection, being cold and indifferent towards her and denying her conjugal rights and consortium. The Respondent had caused the Petitioner to suffer mental anguish. She further averred that the Respondent has been guilty of willful neglect. In particular, she accused the respondent of failing to contribute to the financial needs of the family. She finally stated that the Respondent was guilty of desertion. She stated that the Respondent had deserted the matrimonial home for over five (5) years. For the above reasons, the Petitioner is of the view that her marriage to the Respondent had irretrievably broken down with no possibility of salvage. The Petitioner therefore urged the court to grant her petition for divorce and also award her costs of the petition.

When the Respondent was served, he did enter appearance and filed an answer to the petition. He also cross-petitioned to be divorced from the Petitioner. In the answer to the petition, the Respondent denied the allegations made in the petition for divorce by the Petitioner. The Respondent particularly denied the particulars of cruelty and willful neglect put forward by the Petitioner and put the Petitioner to strict proof thereof.

In his cross-petition for divorce, the Respondent averred that since the celebration of the said marriage, it was the Petitioner who had treated him with cruelty. He sets out the particulars of cruelty in his cross-petition for divorce. The cited instances of cruelty include being rude, ill-tempered and exhibiting violent tendencies towards the Respondent. He accused the Petitioner of treating him with utter contempt and disrespect; being quarrelsome, neglecting her responsibilities as a wife and a mother, denial of conjugal rights to the Respondent and being financially irresponsible. The Respondent complained that the Petitioner had treated his relatives with disrespect. Finally, Respondent accused the Petitioner of deserting the matrimonial home for over five (5) years. It is on account of these matrimonial offences and other grounds in the cross-petition for divorce that the Respondent was of the view that his marriage to the Petitioner had irretrievably broken down. He therefore urged the court to grant his cross-petition for divorce, grant him custody of the child of the marriage and also award him costs of the Petition.

During the hearing of the petition, it was only the Petitioner who was present in court. She reiterated the contents of her petition for divorce. She told the court that she only lived with the Respondent for two (2) years. She testified that the Respondent was irresponsible. She told the court that the Respondent deserted the matrimonial home in the year 2008 and has since then not returned to the said matrimonial home. This court has carefully considered the facts of this divorce cause. It was clear from the evidence adduced by the Petitioner that the marriage between the Petitioner and the Respondent had indeed irretrievably broken down. This court holds that the Petitioner established the ground of cruelty and desertion in her Petition for divorce to the required standard of proof on a balance of probability. Her testimony was uncontroverted. Further, she established the ground of desertion. She has been separated

from the Respondent for over five (5) years. This court will therefore grant the petition for divorce.

In the premises therefore, the marriage celebrated between the Petitioner and the Respondent on 22nd December 2006 at the District Commissioner's Office in Eldoret 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. As regards the issue of custody of the child, 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.

**DATED AT NAIROBI THIS 31<sup>ST</sup> DAY OF JULY, 2014**

**L. KIMARU**

**JUDGE**