

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 20 OF 2013

S W.....PETITIONER

VERSUS

M A JRESPONDENT

J U D G M E N T

The Petitioner and the Respondent were on 12th January 2010 married at the Registrar's Office in Kisumu. The marriage was celebrated under the then **Marriage Act**. After the celebration of the said marriage, the Petitioner and the Respondent cohabited together as husband and wife in Mbale, Busia. According to the Petitioner, at the time of the celebration of the marriage, he was domiciled in the United States of America where he was pursuing his further studies. He returned to the United States of America soon after celebrating the marriage. The marriage has been blessed with one (1) issue. In his petition, the Petitioner complained that since the celebration of the said marriage the Respondent had committed adulterous affairs with various men that he particularized in his petition for divorce. According to the Petitioner, the Respondent's acts of adultery have caused him to suffer mental anguish. He therefore urged the court to grant his petition for divorce because, in his view, his marriage to the Respondent had irretrievably broken down.

Upon being served with the petition, the Respondent duly entered appearance and filed an answer to the petition. She also cross petitioned for divorce. In the answer to the petition, the Respondent denied the allegations made in the petition for divorce and in particular that she had committed acts of adultery. In her cross-petition for divorce, the Respondent attributed their marital woes to the Petitioner's willful neglect of his responsibilities as a husband by not financially supporting her. She stated that the Petitioner also failed to support her during her pregnancy. The Respondent further accused the Petitioner of deserting the matrimonial home for long periods of time. She stated that the Petitioner had been verbally abusive. He had also disclosed that he had told her that he had another woman with whom he had sired a child with. According to the Respondent, the Petitioner had shown her his lack of commitment towards his matrimonial commitments. In the premises therefore, the Respondent urged the court to dissolve the marriage. She also prayed for the court to compel the Petitioner to provide maintenance for the child of the marriage.

In response to the Respondent's answer to the petition and cross-petition, the Petitioner reiterated the contents of the petition and denied all allegations by the Respondent in her cross-petition. During the hearing of the petition for divorce, this court heard evidence adduced by the Petitioner. He basically reiterated the contents of his petition for divorce. He testified that the Respondent refused to relocate to the United States of America where she was to join him. The Petitioner stated that he has been contributing towards the financial needs of the family. The Respondent opted not to give evidence on the issue of divorce. This court has carefully considered the facts of this divorce cause. It was clear from the pleadings filed by both parties and also by the evidence adduced by the Petitioner in court that indeed the marriage between the Petitioner and the Respondent had irretrievably broken down. The Petitioner and the Respondent have virtually not lived together since they were married. This separation has engendered suspicion and mistrust. The allegations and counter-allegations of adultery should be seen in this context. This court holds that the Petitioner established the ground of constructive desertion in his petition for divorce to the required standard of proof on a balance of probability. His testimony was uncontroverted. This court will therefore grant the petition for divorce.

In the premises therefore, the marriage celebrated on 12th January 2010 at the Registrar's Office in Kisumu 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) from the date of this judgment. The Petitioner agreed that he would pay the sum of Kshs.30,000/- every month for the support of the child. The Respondent accepted this sum. This court therefore orders the Petitioner to pay to the Respondent the sum of Kshs.30,000/- per month being the maintenance of the child until further orders of the court. There shall be no orders as to costs.

DATED AT NAIROBI THIS 31ST DAY OF JULY, 2014

L. KIMARU

JUDGE