



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
DIVORCE CAUSE NO. 11 OF 2013

C C J.....PETITIONER

VERSUS

K K K.....RESPONDENT

JUDGMENT

1. The petitioner seeks to dissolve her marriage to the respondent. The union was celebrated on 26th August 2005 at the Attorney General's Office in Nairobi. The marriage was registered under the Marriage Act. The petition is based on grounds of cruelty, desertion and adultery. The respondent was served with the petition and summons to enter appearance. He entered an appearance on 27th June 2012 but failed to file an answer to the petition. The matter therefore proceeded as an undefended cause.
2. The petitioner testified that the couple separated in the year 2010. There are two issues of the marriage *TK* and *TC* (names withheld), a son and daughter, aged eight and two years respectively. All was well in the union until the petitioner was transferred from Nairobi to Eldoret. She said the respondent would disappear with all the money. He neglected the family. He started having extra marital relationships with unnamed women. He infected her with a venereal disease. The respondent would occasionally beat up the petitioner. At one time the fight took place at the hospital where the petitioner was working. It was all very embarrassing. She reported the matter to the police. On another occasion, the respondent carted away all the household goods.
3. For some reasons, the couple reunited. The petitioner got pregnant with the second child. When she was six months pregnant, the respondent beat her up. So severe was the assault that she had to be hospitalized. An illegible copy of a P3 form was produced in evidence. She testified that the respondent burnt all her professional certificates including the original marriage certificate. I found that to be a little too convenient. In the meantime, she was awarded custody of the issues of the marriage by the Children's Court at Eldoret.
4. That evidence is unchallenged. Although the petitioner came across as less than candid, I have reached the conclusion that the marriage has completely broken down. The respondent has treated the petitioner with cruelty; he has deserted her and the children. The desertion had however *not* lasted for *three* years immediately preceding the presentation of the petition. That ground fails. Although generalized allegations of infidelity with unnamed women were made, I was not satisfied that the petitioner proved adultery to the required standard. I have no evidence that these proceedings were brought through collusion or that the petitioner has condoned the cruelty.
5. In a nutshell this marriage is a dry shell; it has irretrievably broken down. As Madan J (as then was) said in *N v N and another* (2008) 1 KLR (G&F) 16 at 17, this husband and wife got

themselves into a “*real grand-sized matrimonial tangle...there are winds of sorrow where their voice was, silence where their love was...*”.

6. Granted all those circumstances I will allow the petition for divorce on the ground of cruelty. The marriage celebrated on 26th August 2005 at the Attorney General’s Office in Nairobi between the petitioner and the respondent is hereby dissolved. A decree *nisi* shall issue forthwith. The decree *nisi* shall be made absolute after six months of today’s date. There shall be no order on costs.

It is so ordered.

DATED, SIGNED and DELIVERED, at NAIROBI this 4th day of August 2014.

GEORGE KANYI KIMONDO

JUDGE

Judgment read in open court in the presence of:

Mr. M. Rop for Mrs. Kimbaru for the petitioner instructed by Ombima & Company Advocates.

No appearance for the respondent

Mr. Kemboi, Court clerk