

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

DIVORCE CAUSE NO. 82 OF 2013

C K N.....PETITIONER

VERSUS

J W K.....RESPONDENT

JUDGMENT

1. The petitioner and the respondent got married on 11th November 1994 under the **Marriage Act (Cap 150)** at the Registrar's office in Nairobi. The marriage was blessed with four children as follows:-
 - a. P K born on 8th July 1985;
 - b. M N born on 23rd October 1989;
 - c. E N born on 10th July 1996; and
 - d. V W born 20th April 1999;
2. On 25th April 2013 the petitioner filed a petition seeking the dissolution of the marriage on the ground of cruelty. The respondent filed an answer on 25th July 2013 to oppose the petition, and filed this cross-petition for divorce on the grounds of cruelty, desertion and adultery.
3. When the case came for hearing on 21st November 2014 counsel for the petitioner informed the court that his client had abandoned the petition. The respondent prosecuted the cross-petition. She testified that the petitioner deserted her and the children on 10th December 1999 and moved to the U.S.A. where he has married another woman. He has come to Kenya twice or thrice but does not see her. He has seen the children once. He pays their fees. He has not tried to reconcile the parties. The testimony was not materially challenged.
4. I find that the petitioner deserted the respondent in 1999, and since then the parties have lived apart. That is a long time for a couple. The petitioner, I find has taken another wife. He is therefore guilty of adultery. The marriage has irretrievably broken down. The marriage is hereby dissolved on the grounds of desertion and adultery. *Decree nisi* shall issue and shall become absolute after 30 days.
5. Of the children, V is below 18. The respondent shall have her legal custody, but the petitioner shall have reasonable access to her. The petitioner shall continue to pay for the education of V, and E, if he is still in school. The respondent shall cater for their maintenance. Costs of the cross petition shall be paid by the petitioner.

DATED and DELIVERED at NAIROBI this 28th November 2014.

A.O. MUCHELULE

JUDGE