



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

DIVORCE CAUSE NO. 88 OF 2013

S N M..... PETITIONER

VERSUS

B M N..... RESPONDENT

JUDGMENT

1. The petitioner has filed a petition dated 7th May, 2013 seeking the dissolution of her marriage to the respondent. She avers that they underwent a statutory marriage on the 11th December, 2009 and were blessed with one biological issue N J M. She avers that the marriage has irretrievably broken down due to the respondent's cruelty and adultery in that he concealed his intentions to move and work in the United States of America and only revealed it to her during the period they were preparing to get married. He had also failed to honor his promise to process their papers to join him there afterwards; that later on communicated he was unable to support their child which caused her a lot of hardship; that she was denied conjugal rights for over 3 years which caused her a lot of psychological and emotional stress.

2. The respondent was duly served with both the petition as well as a summons to enter appearance. He entered appearance and filed an answer to the petition and a cross-petition. He denies the allegations made in the petition and added that that he was pursuing and hoping to obtain a green card prior to his marriage in order to provide a better life for his intended wife and child; that on obtaining the green card the petitioner supported his departure to the USA knowing the implications of his relocation such as conjugal rights and financial stability which were agreeable to the sacrifices by the parties for the greater good of the family. The respondent had promised to return once done with his studies to be with his family; that despite the distance he continued to do all he could reasonably do to ensure his family was well maintained and continued to provide for his family by sending money and communicating with them on regular basis;

3. In his cross-petition he accused the petitioner of cruelty, stating that the petitioner had abdicated her wifely duties as she would not cook for him or maintain their house; that there was some breakdown in communication between them. The petitioner has refused the maternal family access to their child and this has caused him mental suffering and psychological torture as he was not informed of his son's well-being; that the petitioner had changed the child's names from J N M to N J M given to him at birth knowing that the same had special meaning to him. He also accused the petitioner of having deserted the marriage by failing to communicate with him since his return from the USA and that she used material gains as leverage in her relationship and though she was working did not contribute anything towards the child's upkeep and viewed the same as a burden to be borne solely by the respondent.

4. The petitioner further filed a reply dated 4th April 2014 to the respondents reply to petition and cross petition and reiterated grounds as stated in her petition and recanted the allegations as raised by the

respondent in his cross petition.

5. The petitioner testified on 9th October 2014 and reiterated averments and the contentions made in her petition. No counter evidence was given by the respondent, and therefore the petitioner’s story was not controverted. The petitioner was however cross-examined by counsel for the respondent.

6. The parties were married under the Marriage Act (Cap 150) Laws of Kenya. Section 8(1) of the Matrimonial Causes Act (Cap 152) which provides for grounds of petition for divorce or dissolution of a marriage. Such grounds include adultery, desertion and cruelty which the petitioner has invoked in this petition.

7. The burden of proving cruelty lay with the petitioner. Cruelty is a question of fact and the degree depends on the circumstances of each individual case. I find that the petitioner has failed to establish to the required standards of the allegations of cruelty made against the respondent. It would appear to me that the marriage between the parties herein has irretrievably broken down. There is also no evidence that the petitioner has condoned the cruelty proved in this case.

8. However, it is apparent that the marriage between the two has irretrievably broken down as such any attempt to sustaining the marriage would cause both of them untold anxiety and/or psychological torture. I find that it is in their best interest and in the interest of justice that the marriage be dissolved. I hereby dissolve the marriage celebrated between the petitioner and respondent on 11th December, 2009. A decree nisi shall issue forthwith, and may be made absolute after thirty (30) days. The parties have one issue of the marriage and as such it is in the interest of the child that both parties have joint custody to care and maintain him.

Each party shall bear their own costs.

Dated, signed and delivered this **28th** day of **November** 2014.

R.E. OUGO

JUDGE

In the presence of:-

.....For the Petitioner

.....For the Respondent

.....Court Clerk