

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
FAMILY DIVISION
DIVORCE CAUSE NO 90 OF 2013

Z. A.....PETITIONER

-VERSUS-

R. W. D.....RESPONDENT

JUDGMENT

1. On the 9th of March 2013 the petitioner filed a petition against respondent seeking that their marriage be dissolved. Her grounds in the said petition are cruelty which she particularises at paragraph 8(a) (ii to iiiv) of her petition. On the 13th of February 2014 the Deputy Registrar certified that the matter proceeds as undefended cause.

2. The Petitioner testified as follows; that she married the Respondent on 25th January 2008 as exhibited in the marriage certificate exhibit 1 and they have lived in Nairobi all along. They have two children from the marriage namely Z D (Deceased) and A D Z born on the 2nd June 2010 and 20th February 2012 respectively. She seeks dissolution of the marriage because of cruelty and adultery; that on several occasions the Respondent abused her physically in front of friends and house help; that in December 2010, December 2011 and April 2011 he beat her in front of the house help. She went to Avenue Hospital and also reported the matter to the police. He also beat her after the loss of their first born and humiliated her and all in these occasions she did not hit back; that in most instances she would ask him for provisions and help yet he drunk daily and his girlfriends would call her at night when she would ask him, he would beat her; that from May 2011 to August 2011 they were together in Nairobi and he was later posted to Mombasa Navy. He would come once a month but would not spend time with them; that in 2009 she would receive texts from women that suggested he had affairs with him. That at one time he harassed her at Kenya Cinema and later she had heard that he had a lady in their house in Kitengela. She confirmed the presence of the lady in the same house. She sought help from her husband's elder sister but he told her that she had no business interfering with their marriage. She also consulted their uncles , parents and even went to the church over their issues and nothing has changed. That they have not lived together since December 2012 and she lives with her daughter in a place where she has rented.

3. The parties were married under the Marriage Act (Cap 150) Laws of Kenya. The law provides for grounds of petition for divorce or dissolution of a marriage. Such grounds include adultery, and cruelty which the petitioner has invoked in this petition. The burden of proving cruelty and adultery lie with the petitioner. Cruelty is a question of fact and the degree depends on the circumstances of each individual case.

4. From the evidence adduced the Petitioner has given instances of cruelty by the Respondent to support her petition which has not been challenged. Adultery has not been proved. The parties have been married for the last five years to date. It is evident that the marriage has irretrievably broken down. I therefore grant the prayers sought by the petitioner. The marriage between the Petitioner and the Respondent is dissolved. A decree nisi shall issue forthwith, and may be made absolute after thirty (30) days. No order as to costs.

Orders accordingly.

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

R. E OUGO

JUDGE

In the Presence of:

.....**Petitioner**

.....**Respondent**

.....**Court Clerk**