



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 163 OF 2012

BETWEEN

S NPETITIONER

AND

S K TRESPONDENT

JUDGEMENT

1. The Petitioner then a bachelor of Kenyan extraction and the Respondent then a spinster of Eritrean citizenry, were married on 23rd August 2004 at the Census and Civil Status Division of the Municipality of Keren in the Republic of Eritrea. A certificate of marriage serial Number *[particulars withheld]* was issued to them in accordance with the **CIVIL LAW ART/603/604/606**. The couple thereafter cohabited at Keren in Eritrea, Nakuru and Nairobi respectively. They were blessed with two issues of the marriage aged as follows at the time of filing the Petition:

- i. K W N aged 7 years
- ii. B W N age 5 years

Both Petitioner and Respondent are domiciled in Kenya where the Petitioner works as a humanitarian aid worker in Nairobi, while the Respondent resides at an unknown place within the Republic of Kenya.

2. The Petition filed on 1st September 2012 is premised on grounds of cruelty. The acts of cruelty are said to have been visited upon the Petitioner by the Respondent. The Petitioner set out the particulars of cruelty and averred that the Respondent is a woman of violent disposition. That she is aggressive, has an uncontrollable temper and had treated the Petitioner with contempt, disdain, and hatred during their marriage. The Petitioner also asserted that the Respondent had on several occasions neglected the children of the marriage, with a view to subjecting the Petitioner to mental anguish and agony over the safety and wellbeing of his children. That the Respondent deserted the matrimonial home since the year 2011 and travelled to an unknown place with the children of the marriage without notifying the Petitioner.

3. The Petitioner confirms that this Petition has not been presented or prosecuted in collusion with the Respondent, nor has he connived or condoned the cruel acts complained of. He also certified that there have been no previous proceedings filed regarding the marriage. The Respondent was served through substituted service through an advertisement in the Daily Nation on 13th March 2013. She was eventually served personally on 30th October 2013. She did not enter appearance or file an Answer to the Petition.

4. On 3rd July 2014 the Deputy Registrar certified that the matter was suitable to proceed for hearing as an undefended cause for one day in Nairobi. The Petitioner testified on 16th October 2014 and reiterated

what he had set out in the Petition. In addition, he stated that as at the time of testifying he had no idea where the Respondent was living.

5. He prayed that the marriage be dissolved. The Petitioner further prayed that the custody of the children whose whereabouts are unknown and who now include Y N alias Y O aged 15 years, be granted to him.

6. From the foregoing it is evident that the marriage celebrated between the parties herein on 23rd August 2004 has broken down irretrievably and cannot be salvaged.

7. I therefore make orders as follows:

- a. That the marriage celebrated between the Petitioner and Respondent at the Census and Civil Status Division of the Municipality of Keren in the Republic of Eritrea on 23rd August 2004, is hereby dissolved.
- b. That Decree Nisi dissolving the said marriage is hereby issued to be made absolute thirty (30) days from the date of this judgment.
- c. That matters concerning the custody of the children shall be determined by the Children's Court.
- d. There shall be no orders as to costs.

SIGNED DATED and DELIVERED in open court this **27th day of November 2014.**

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L. A. ACHODE

JUDGE