



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 5 OF 2010

BETWEEN

L W N.....PETITIONER

AND

M W W.....RESPONDENT

JUDGEMENT

1. Marriage was celebrated between the parties herein on 21st February 1986 at the office of the Registrar of Marriages in Nairobi, under the Marriage Act, Cap. 150, Laws of Kenya. The marriage certificate issued serial number [particulars withheld] is attached to the petition.
2. The couple thereafter cohabited at Kiambu and at Kahawa Sukari [particulars withheld] estates in Nairobi, as husband and wife. They were blessed with three children – **G N, Z M and J W**, who are now all adults .
3. The petition in this matter was filed in court on 14th January 2010. The petitioner accuses the respondent of cruelty and adultery. The particulars of cruelty are that the respondent has been emotionally hostile to the petitioner, shows no affection to him and goes home late, does not show marital love and affection, severely moving out of the matrimonial bedroom and thereby denying the petitioner of his conjugal rights, insulting the petitioner before their employees, abandoning him while he was recovering from surgery, inciting the children against him, kicking him out of the matrimonial home twice, colluding with police officers to threaten and harass him, among others. The grounds of adultery are founded on the alleged love affair between the respondent and a man identified as Joseph Kiarie Mbugua.
4. He seeks dissolution of the marriage on these grounds arguing that the marriage has irretrievably broken down. He avers that due to the troubles in the marriage he was forced to move out of the matrimonial home in 2009.
5. He also asks for division of the matrimonial property. He has itemised in the petition the assets that he says were jointly acquired during coverture. He pleads that he spent substantial amounts of money in developing two of the properties, the residential houses at Kahawa Sukari and Muthaiga North. He has also identified the properties that each of them is in possession and control of.
6. The petition was served on the respondent, who entered appearance and filed an answer to the petition and a cross-petition. She denies the allegations made in the petition, and avers that contrary to what is pleaded in those papers it is actually the petitioner who has committed adultery

during the subsistence of the marriage with one **A W G**, with whom he is now living after he left the respondent in 2009.

7. He is also accused of cruelty. The details set out in the petition are that he was in the habit of deserting the respondent for three months whenever she got a baby. taking away all the money set aside for caring for the children and failing to provide for them, deserting her whenever she was sick, sleeping out of the matrimonial home without the respondent's knowledge, denying the respondent her conjugal rights and claiming that he had erectile dysfunction, locking her out the family farm at Garden Estate and letting his mistress to run it after locking her out, planning to child traffic the children, inciting workers against her after introducing the mistress as his woman, among others
8. In her cross-petition she accuses the petitioner of cruelty and adultery, and reiterates the allegations set out in paragraph 7 here above. She avers that the marriage has for all purposes broken down irretrievably. She accuses him of having completely abdicated his responsibilities as father and husband. She prays for alimony, maintenance and custody of the children.
9. On 3rd March 2011 the matter was cleared by the registrar to proceed for hearing as a defended cause.
10. The petitioner testified on 8th December 2011, 26th January 2012 and 6th March 2014 and gave vent to the allegations made in his petition. The respondent took the stand on 6th March 2014 after the petitioner closed his case. She was to be cross-examined on 5th June 2014 by counsel for the petitioner, but he did not attend court and the respondent closed her case. In her evidence she breathed life to the allegations made in her answer to petition and cross-petition.
11. It would appear to me that the marriage between the parties herein has irretrievably broken down going by the details that are particularised in the papers filed herein as well as the evidence adduced at the trial. The parties separated in 2009 and have been living apart since then. From the recorded evidence it would appear that both parties contributed to the breakup of the marriage although the petitioner appears to have contributed the most to the matters that wore down the marriage. I note however that the respondent has not prayed for dissolution of the marriage in her petition.
12. Both parties have made allegations of adultery against each other and named persons who they claim the other slept with. I note however that none of them has joined these third parties as co-respondents. The petitioner alleged that he did not join the person he names as paramour because the person had died prior to filing of the petition. That in my view is no excuse, the fact that he did not file for divorce when the former was alive suggests that he had forgiven the alleged adultery. I will not give any attention to the allegations of adultery as the alleged paramours have not been joined as co-respondents as required by the law.
13. It would also appear to me that there has been no collusion between the petitioner and the respondent in the bringing of these proceedings. There is also no evidence that the petitioner has condoned the cruelty proved in this case.
14. The petitioner prays for division of matrimonial property. I note however that he has led no evidence at all to support this claim, there is therefore no basis whatsoever for making the order sought. Similarly, the respondent prays for alimony and maintenance, yet she led no evidence whatsoever that could provide a base for the making of the orders sought. She also seeks custody of the children, but as noted earlier, they are all adult.
15. The orders that I am disposed to make in the circumstances are as follows:-

- a. I hereby dissolve the marriage celebrated between the petitioner and the respondent on 21st

- February 1986 in terms of prayer 1 of the petition;
- b. Decree *nisi* shall issue forthwith, and may be made absolute after thirty (30) days; and
 - c. There shall be no orders as to costs.

DATED, SIGNED and DELIVERED at NAIROBI this 24th DAY OF November 2014.

W. MUSYOKA

JUDGE

In the presence of Mr. Khasiani for Mrs. Mbabu advocate for the respondent.