



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**DIVORCE CAUSE NO. 169 OF 2013**

**BETWEEN**

**J O O.....PETITIONER**

**AND**

**R W M.....RESPONDENT**

**JUDGEMENT**

1. Marriage was celebrated between the parties herein on 6<sup>th</sup> August 2010 at the office of the Registrar of Marriages in Nairobi. A certificate of marriage serial number *[particulars withheld]* was issued to them in accordance with the Marriage Act. The couple thereafter cohabited at Dagoretti Corner, Wanyee Road in Nairobi, Kenya, as husband and wife. The couple was blessed with issue, J W O, born in 2010.

2. The petition in this matter was filed in court on 13<sup>th</sup> August 2013. The petitioner accuses the respondent of adultery, cruelty and desertion. On adultery, it is alleged that the respondent had sexual relations outside marriage with several unknown men. Not much weight should be given to this ground as the paramours have not been identified nor made co-respondents to the petition.

3. It is pleaded on desertion that the respondent left the matrimonial home on 21<sup>st</sup> March 2011 and has not returned to date. On cruelty, it is pleaded that the respondent has severally denied the petitioner his conjugal rights. It is further alleged that she confessed to the petitioner on 21<sup>st</sup> October 2012 that she had moved on with her life, had committed adultery with several men and that she did not plan on coming back to the petitioner.

4. The petition was served on the respondent and she did file appearance through counsel, but she did not file answer to the divorce petition nor cross-petition. On 13<sup>th</sup> March 2014 the Deputy Registrar certified that the matter proceeds for hearing as an undefended cause. As there is no reply, the petitioner's allegations, as made in the petition, remain uncontroverted.

5. The petitioner testified on 16<sup>th</sup> October 2014 and gave vent to the allegations made in his petition. No counter evidence was given by the respondent, and therefore the petitioner's story was not controverted. I am satisfied that the respondent has been cruel to the petitioner, by denying him his conjugal rights and by being dishonest to him in the course of the marriage. Three years have not lapsed since the alleged desertion and therefore divorce is not available under this ground. The adultery ground is not available too for the persons that the respondent allegedly committed adultery with have not been named nor joined to the proceedings as co-respondents.

6. It would appear to me that the marriage between the parties herein has irretrievably broken down. 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.

7. I hereby dissolve the marriage celebrated between the petitioner and respondent on 6<sup>th</sup> August 2010. Decree *nisi* shall issue forthwith, to be made absolute after thirty (30) days. There will be no order as to

costs.

**DATED, SIGNED and DELIVERED at NAIROBI this 19th DAY OF December 2014.**

**W. MUSYOKA**

**JUDGE**