



**REPUBLIC OF KENYA**

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

**DIVORCE CAUSE NO. 38 OF 2009**

**BETWEEN**

**R J P.....PETITIONER**

**AND**

**V R V G.....RESPONDENT**

**JUDGEMENT**

1. Marriage was celebrated between the parties herein on 14<sup>th</sup> February 1995 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 5<sup>th</sup> Parklands Avenue in Nairobi, Kenya, as husband and wife. The couple was not blessed with issue.
2. The petition in this matter was filed in court on 5<sup>th</sup> March 2009. The petitioner accuses the respondent of cruelty. It is pleaded that the respondent has no respect whatsoever towards the respondent. It is further alleged that the parties are incompatible and have not had a husband and wife relationship for years.
3. The petition was served on the respondent, who entered appearance through counsel and filed an answer to the divorce petition and a cross-petition. She denies the allegation of cruelty set out in the petition and avers that in fact it is the petitioner who has never made an effort to make the marriage work. In her cross-petition, she accuses the petitioner of cruelty and adultery. It is alleged that he failed to provide for her financially, failed to keep a steady job, squandered money that the respondent had obtained through loan to facilitate their immigration to Australia, among others.
4. On adultery, it is alleged that he has had an adulterous relationship with a woman called M V and the two have a child between them. I note that although the person who is alleged to have committed adultery with the petitioner is named in the cross-petition, she has not been joined to the proceedings as a co-respondent.
5. The petitioner filed an answer to the petition. He admits that he was cohabiting with the alleged M V and to the fact that he has had children with the said M. He asserts that he has had a steady job with a named firm, but that he lost the job after the principal behind the firm died. He admits further that the parties planned to emigrate and had raised funds for the purpose, but he was forced to spend part of the money after he lost his job. He accuses the respondent of having been more inclined towards her family thereby causing a strain on their relationship ultimately causing the

marriage to break down.

6. On 23<sup>rd</sup> September 2010 the Deputy Registrar certified that the matter proceeds for hearing as a defended cause.
7. The matter proceeded on 18<sup>th</sup> September 2104. Both parties were in court, but counsel for the petitioner was absent. The petitioner pleaded that his counsel had asked him to request the court for an adjournment of the matter to another date. No reason was given for the advocate's non-attendance. After being satisfied that there was proper service I directed that the matter proceed.
8. The petitioner opted not to testify but the respondent gave evidence. She gave vent to the allegations made in her cross-petition.
9. I note that she alleged adultery and named the person alleged to have committed adultery with the petitioner. She added that the petitioner and that other woman had a child. The petitioner admitted the fact that he was in another relationship, which had brought forth two children. In view of this I am inclined to allow the cross-petition on the ground of adultery as the petitioner engaged in the said adulterous relationship while his marriage with the respondent was still subsisting.
10. 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 adultery.
11. I hereby dissolve the marriage celebrated between the petitioner and respondent on 14<sup>th</sup> February 1995. Decree *nisi* shall issue forthwith, to be made absolute after thirty (30) days. The respondent shall costs of the suit.

**DATED, SIGNED and DELIVERED at NAIROBI this 19<sup>TH</sup> DAY OF December 2014.**

**W. MUSYOKA**

**JUDGE**