

REPUBLIC OF KENYA

IN THE HIGH COURT AT MALINDI

DIVORCE CAUSE NO. 4 OF 2012

L PPETITIONER

VERSUS

M W MRESPONDENT

JUDGMENT

In his petition dated 29th October, 2012, the Petitioner is seeking dissolution of his marriage with the Respondent on the grounds of cruelty. The Petitioner testified that he got married to the Respondent on 12th October, 2011. On the 16th February, 2012, the Respondent visited a doctor and she tested HIV positive. The Petitioner went for a HIV test and was found to be negative. The Respondent did a second test and she was found to be HIV positive.

It is the Petitioner's evidence that since that time the two separated and have been living in separate houses. There is no child out of the marriage. Due to the Respondent's condition, he cannot continue the marriage.

The Respondent testified that it is true she got married to the Petitioner on 12th October, 2011. She lives in Malindi but at time she stays at Machakos. The two have separated for the last 2½ years. In her answer to the petition dated 18th December, 2012, the Respondent contends that the marriage has irretrievably broken down and there is little hope of reconciliation.

The Petitioner in his Petition stated several particulars of cruelty. He contends that the Respondent concealed to him that she was HIV positive. The Respondent exposed him to the danger of infection of a venereal disease and this has caused him psychological and physical torture. Given the evidence on record, I do find that the Petitioner has proved his claim.

It is quite possible that the Respondent knew of her HIV status but did not reveal it to the Petitioner. This must have caused the Petitioner some mental torture as the disease so far has no cure. I do find that the allegations of cruelty have been proved. Further, the parties have been living separately for over 2½ years. The Respondent states that the marriage has irretrievably broken down.

From the evidence herein, I do find that the Petition has been proved. There is no hope of reconciliation. The marriage is hereby dissolved. a Decree Nisi shall issue forthwith. Each party is at liberty to apply for a Decree Absolute after the expiry of six (6) months.

Delivered and Dated in Malindi this **18th** day of **December, 2014** in the presence of:

Said J. Chitembwe

JUDGE