

REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Divorce Cause 39 of 2006

M. M. M.....PETITIONER

VERSUS

D. M. N.....RESPONDENT

J U D G M E N T

The Petitioner and the Respondent were on 9th June 1996 married at the Buru Buru Community Centre in Nairobi. The marriage was blessed with two issues. Both issues are now adults. According to the Petitioner, the marriage has not been a happy one. She accuses the Respondent of treating her with cruelty. In particular, she states that the Respondent had on several occasions been violent towards her. She complains that the Respondent physically assaulted her during the subsistence of the marriage to the extent that she left the matrimonial home in November 1995. Since then, she had been separated from the Respondent. In the premises therefore, she avers that her marriage to the Respondent ought to be dissolved.

When the Respondent was served, he did enter appearance and filed an answer to the petition. He denied that he had been physically violent towards the Petitioner. He averred that the reason why he was separated from the Petitioner was because of the Petitioner's irresponsible behaviour. In particular, he stated that the Petitioner had abandoned her duties as a wife and mother by drinking alcohol and engaging in extra marital affairs. He stated that the Petitioner had brought the petition to achieve an ulterior motive. He urged the court to dismiss the petition with costs.

During the hearing of the petition, it was only the Petitioner who was present in court. She reiterated the contents of her petition for divorce. She told the court that during the subsistence of the marriage, the Respondent subjected her to physical abuse. She told the court that she had been separated from the Respondent for a period of eighteen (18) years. She urged the court to grant her petition for divorce. This court has carefully considered the facts of this divorce cause. It was clear from the evidence adduced by the Petitioner that the marriage between the Petitioner and the Respondent had indeed irretrievably broken down. This court holds that the Petitioner established the ground of cruelty in her petition for divorce to the required standard of proof on a balance of probability. Her testimony was uncontroverted. Further, she established the ground of desertion. She has been separated from the Respondent for a period of eighteen (18) years. If reconciliation were to succeed, then, during this period the same ought to have been attempted. It is apparent to the court that the Petitioner and the Respondent have each gone their separate ways. This court will therefore grant the petition for divorce.

In the premises therefore, the marriage celebrated between the Petitioner and the Respondent which on 9th June 1990 at Buru Buru Community Centre, Nairobi is hereby dissolved. Decree nisi dissolving the said marriage is hereby issued. The decree nisi shall be made absolute thirty (30) days from the date of this judgment. There shall be no orders as to costs.

DATED AT NAIROBI THIS 19th DAY OF APRIL, 2013

L. KIMARU

JUDGE