

REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Divorce Cause 40 of 2009

D. W.....PETITIONER

VERSUS

C. K. N.....RESPONDENT

J U D G M E N T

The Petitioner and the Respondent were married on 16th September 1994 at Registrar’s Office, Nairobi. Prior to the formalization of the marriage, the Petitioner and the Respondent had cohabited together as husband and wife since 1980. The marriage has been blessed with four (4) children. All the children are now adults. According to the Petitioner, the Respondent had since the celebration of the marriage treated her with cruelty. She further accuses the Respondent of committing the matrimonial offence of adultery. In the particulars set out in the petition for divorce, the Petitioner averred that the Respondent had between 1985 and 1997 physically assaulted her and thrown her out of the matrimonial home. She stated that in January 1997, the Respondent threw her out of the matrimonial home. Since then, the Petitioner and the Respondent have been separated. The Petitioner further averred that the Respondent had engaged in extra marital affairs with several women during the entire period of their marriage. She states that in a relationship with one woman, the Respondent had even sired a child out of wedlock. It is on account of the above matrimonial offences that the Petitioner is of the view that her marriage to the Respondent had irretrievably broken down with no possibility of salvage. She therefore urges the court to dissolve the marriage.

When the Respondent was served, he duly entered appearance and filed answer to the petition. He denied the allegation made in the petition for divorce that he had treated the Petitioner with cruelty or that he had committed acts of cruelty. He averred that it was the Petitioner who left the matrimonial home on her own volition leaving behind the young children of the marriage under the custody of the Respondent. He attributes the genesis of his difference with the Petitioner to the Respondent’s decision to join the Jehovah’s Witness sect. He avers that it was the Petitioner who broke communication with him. In the premises, he urged the court to dismiss the petition for divorce with costs.

During the hearing of the petition, this court heard oral evidence adduced by both the Petitioner and the Respondent. This court has carefully considered the said evidence together with the pleadings filed by the parties herein in support of their respective opposing positions. What emerged from the evidence is that although the marriage between the Petitioner and the Respondent was a tumultuous one, the Petitioner and the Respondent tolerated each other until January 1997 when the Petitioner was thrown out of the matrimonial home. Since then, the Petitioner and the Respondent have been separated. The Respondent adduced evidence which confirmed that the Petitioner and the Respondent have since their separation communicated only in matters relating to the welfare of their children. After evaluating the evidence, this court formed the opinion that the separation of more than sixteen (16) years is proof that indeed the marriage between the Petitioner and the Respondent has irretrievably broken down with no possibility of salvage. Although the Respondent expressed the intention that he would still be interested to give the marriage a chance, the evidence adduced by the parties herein is to the contrary. If there was to be reconciliation, then the same should have been attempted in the sixteen (16) years that the parties herein had been separated. This court will grant the petition for divorce on the ground of desertion.

In the premises therefore, the marriage celebrated between the Petitioner and the Respondent on 16th September 1994 at the Registrar's office in 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 18th DAY OF APRIL, 2013

L. KIMARU

JUDGE