

REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Divorce Cause 100 of 2007

V. W. W. K.....
.....PETITIONER

VERSUS

M. K. B.....
RESPONDENT

J U D G M E N T

By an amended petition filed in court on 8th March 2012, the Petitioner sought orders from the court to be divorced from the Respondent. According to the said petition, the Petitioner was married to the Respondent on 28th November 2003 at the Registrar's Office in Nairobi. The marriage was blessed with one issue born on 2nd January 2006. The Petitioner is a Kenyan citizen while the Respondent is a Congolese national residing in Kenya. According to the Petitioner, the Respondent had since the celebration of the said marriage treated him with cruelty. He set out the particulars of cruelty in paragraph 8 of the petition. In summary, he states that the Respondent had willfully inflicted pain, anguish and misery upon him that are of a psychological nature that taken into totality, amounted to cruelty. He stated that the Respondent had caused him be sacked from his employment by making false allegations that he had failed to support her and the child of the marriage. He accused the Respondent of taking the unilateral decision to circumcise their son a few months after his birth contrary to the Petitioner's community's custom. He also complained that the Respondent had on several occasions attempted to commit suicide with the intention of causing the Petitioner anxiety and distress. He accused the Respondent of insulting his mother and refusing to recognize the Petitioner's relatives. It was on these grounds and others pleaded in the petition for divorce that the Petitioner was of the view that his marriage to the Respondent had irretrievably broken down with no possibility of salvage. He urges the court to grant his petition for divorce.

Although the Respondent was served with the petition for divorce, the Respondent did not enter appearance. Neither did she file any papers in opposition to the petition. The Deputy Registrar of this Court issued a certificate certifying that the proceedings herein continues as undefended divorce cause. At the hearing of the petition, this court heard oral evidence adduced by the Petitioner. In essence, the Petitioner reiterated the contents of his petition for divorce. He testified that the Respondent had subjected him to cruelty to the extent that his life had been reduced to misery. The Petitioner testified that the Respondent left the matrimonial home in 2007. Since then, the Respondent had disappeared. The evidence adduced by the Petitioner was uncontroverted. This court has carefully considered the facts of this case. It was clear to this court that the marriage between the Petitioner and the Respondent had irretrievably broken down that it was incapable of being salvaged. The incidents of cruelty narrated by the Petitioner, taken in totality, established to the required standard of proof on a balance of probabilities the matrimonial ground for divorce of cruelty. It was clear that the marital relationship between the Petitioner and the Respondent had deteriorated to such an extent that the couple may not be said to have related as husband and wife. This court therefore holds that the Petitioner established the ground of cruelty in his petition for divorce.

In the premises therefore, this court will grant the petition for divorce craved for by the Petitioner. The marriage celebrated on 28th November 2003 at the Registrar's Office, Nairobi between the Petitioner and the Respondent 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**