

7th February, 2012, it implies that by 11th March, 2013, when the Petition came up for hearing, the two parties had been living separate lives for over eleven (11) years.

During that whole period of time, the Petitioner has been denied his conjugal rights. That fact constitutes both desertion as well as cruelty. That alone is sufficient ground to justify the grant of the divorce sought by the petitioner. Accordingly, I do now grant an order dissolving the marriage between the Petitioner and the 1st Respondent.

Meanwhile, as no evidence was led by the 1st Respondent to prove any of the assertions set out in her cross-petition, the said cross-petition is dismissed, with costs to the Petitioner.

The costs of the Petition are also awarded to the Petitioner.

As regards the custody of the children, I note that A.M.O and N.N.O are already above the age of 18. They therefore have the legal right and authority to make their own decisions about who they wish to relate to, and in what manner.

By the Petitioner's own admission, the children have all lived with their mother from the year 2004. That is a period of about nine (9) years.

The Petitioner has not led any evidence to justify an order to suddenly uproot the two younger children from their mother.

In any event, there have been separate legal proceedings before the Children's Court, addressing the issue of the custody of the children in question. If either of the parties were dissatisfied with such orders made by the Children's Court, they would move the court appropriately. For now, I decline to make any other orders on the issue of the custody of M.B.O and C.N.O.

DATED SIGNED AND DELIVERED AT ELDORET

THIS 15TH DAY OF APRIL, 2013.

FRED A. OCHIENG
JUDGE