

REPUBLIC OF KENYA

High Court at Nairobi (Milimani Law Courts)

Divorce Cause 32 of 2012

J.A.O.....PETITIONER

VERSUS

P.O.A.....RESPONDENT

J U D G M E N T

The Petitioner, J.A.O on 17th March 2010 was married to the Respondent, P.O.A. The marriage was celebrated under the **Marriage Act** at the Registrar's Office in Nairobi. Prior to the formalization of the marriage, the Petitioner and the Respondent had cohabited together as husband and wife for a period of four (4) years. The marriage has been blessed with one issue. It was apparent that soon after the celebration of the said marriage, the marital relationship between the Petitioner and the Respondent deteriorated to such an extent that the Petitioner moved this court within the year of the celebration of the marriage to be granted leave to file a petition for divorce before the expiry of the statutory three (3) years. The application was allowed on 16th February 2012. In her petition for divorce, the Petitioner averred that since the celebration of the said marriage, the Respondent had treated her with cruelty. He had further committed acts of adultery, and had as a result infected her with a sexually transmitted disease. She also accused the Respondent of abandoning her and failing to maintain her and the child of the marriage. The particulars of the cruelty, abandonment and adultery were set out in the petition for divorce. The Petitioner attributed the Respondent's misbehaviour to excessive drinking of alcohol. As a result of the foregoing indiscretions, the Petitioner formed the view that her marriage to the Respondent had irretrievably broken down and was incapable of being salvaged. She therefore asks the court to grant her petition for divorce. She prays to be granted custody of the child of the marriage. She further prays to be awarded costs of the petition.

The Respondent was duly served with the petition for divorce. He did not enter appearance. Neither did he file any answer to the petition. Being satisfied that the Respondent was properly served, the Deputy Registrar of this court issued a certificate certifying that this court could take the proceedings herein as undefended divorce cause. At the hearing of the petition for divorce, this court heard oral evidence adduced by the Petitioner. In essence, the Petitioner reiterated the contents of her petition for divorce. She testified that she was moved to file the petition for divorce because of the Respondent's drunkenness and irresponsibility. She testified that when the Respondent came home when he was drunk, more often than not, he would verbally and physically abuse her. It was during such times that the respondent also engaged in extra marital affairs. It was her evidence that although she had tried to talk to the Respondent to desist from his behaviour, she had not been successful. She testified that she separated from the Respondent soon after the birth of their child. She told the court that there was no possibility that the marriage could be salvaged.

This court has carefully considered the facts of this petition for divorce. It was clear to the court that the marriage between the Petitioner and the respondent had indeed irretrievably broken down. The Petitioner adduced evidence which established to the required standard of proof on a balance of probabilities that indeed the Respondent had committed the matrimonial offences of cruelty, adultery and neglect. It was apparent that all the effort by the Petitioner to salvage the marriage had been frustrated by the Respondent's lack of positive response. In the premises therefore, this court will grant the petition for divorce.

The marriage celebrated between the Petitioner and the Respondent at the Registrar's Office in Nairobi on 17th March 2010 is hereby dissolved. Decree nisi dissolving the said marriage is hereby issued. The decree nisi shall be made absolute one (1) month from the date of this judgment. The Petitioner shall have the custody of the child of the marriage. There shall be no orders as to costs.

DATED AT NAIROBI THIS 13TH DAY OF MAY 2013.

L. KIMARU
JUDGE