

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 67 OF 2012

BETWEEN

J M.....PETITIONER

AND

E K.....RESPONDENT

JUDGEMENT

The petitioner in this matter married the respondent on 27th February 2008 at a ceremony at the Attorney-General's Chambers in Nairobi. A certificate of marriage No. (withheld) was duly issued, copy of which is attached to the petition filed in court in this cause. The couple thereafter cohabited at (withheld). There is one issue of the marriage – S M (minor), born on 10th October 2010.

The petition herein was filed in court on 17th April 2012. In it the petitioner accuses the respondent of adultery, desertion and cruelty towards him. The respondent is said to have deserted the matrimonial home on 8th December 2010, never to be seen again. During the period, the respondent is said to have had no interest at all towards the petitioner. The particulars of cruelty are itemised in the petition – physical assault, verbal abuse and insults, using goons to cart away family household goods, and drunkenness. The respondent is said to have committed adultery with a variety of men during coverture. As at the time of the filing of the petition she was said to be committing adultery with a B M O with who she was cohabiting.

The petition and the notice to appear were served on the respondent, on 8th May 2012. There is an affidavit of service on record sworn on 10th May and filed in court on 11th May 2012. The respondent did not appear nor file an answer to the petition, and therefore the cause was cleared by the Deputy Registrar on 21st June 2012 to proceed as an undefended cause.

The petitioner testified on 30th May 2013. The petitioner testified mainly on the adultery. He was alerted to the possibility of the unfaithfulness of the respondent by her unresponsiveness towards his sexual overtures, adding that she often refused to have sex with him. He later discovered that she was having a sexual relationship with B M O. The petitioner has filed a list of documents, one of them being an extract of communication from the respondent's mobile phone. The content of the communication indicates that she has had communication of an intimate nature with several men, among them J N, L W and K S. The communication is not of the kind that would be expected of a married woman. It suggests that she had adulterous relationships with these men. He complained that the respondent left the matrimonial home on 8th December 2010 and never came back. It is clear from the evidence that there is no marriage. All efforts to reconcile are said to have failed. This evidence was uncontroverted.

The petitioner testified that the minor child of the marriage is with the respondent. He is in a private school called (withheld). It is the petitioner who pays school fees. The petitioner says he would like at a later stage to have custody of the child.

It appears to me that the marriage between the parties has completely broken down. It would also appear

to me that there has been no collusion between the petitioner and the respondent in bringing these proceedings. There is also no evidence that the petitioner has condoned the cruelty and desertion.

I will allow the petition dated 10th April 2012, and dissolve the marriage celebrated between the petitioner and respondent on 27th February 2008. Decree *nisi* shall issue forthwith, to be made absolute after thirty (30) days.

Joint custody of the child is granted to the parties. The respondent shall continue to have physical custody but the petitioner shall be entitled to access. The respondent shall have access on alternate weekends from 9.00 am to 5.00 pm. The petitioner shall pick the child from the respondent's residence and drop him back. He shall also be entitled to have him over the school holidays. The petitioner shall continue to pay school fees. There shall be liberty to apply to the Children's Court

There will be no orders as to costs.

DATED, SIGNED and DELIVERED AT NAIROBI THIS 27th DAY OF June 2013.

W. MUSYOKA

JUDGE