

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO.21 OF 2008

R K O..... PETITIONER

VERSUS

A E L O.....RESPONDENT

J U D G M E N T

The Petitioner and the Respondent were on 4th September 1999 married at the Nairobi Shrine of Mary Help of Christians Church. The marriage was celebrated under the **Marriage Act**. The marriage was blessed with one child, a boy, born on 30th August 2000. According to the Petitioner, she cohabited with the Respondent for a period of three (3) years before they separated. She avers that their separation was caused by persistent irreconcilable differences and disagreements. Since their separation, the Petitioner and the Respondent have continued to live their separate lives. From the pleadings, it was apparent that no effort was either made by the Petitioner or the Respondent to resume cohabitation. It was due to this long period of separation that the Petitioner formed the opinion that her marriage to the Respondent was irretrievably broken down with no possibility of salvage. The Petitioner therefore craves for this court to grant her petition for divorce. The Petitioner further prayed to be granted custody of the child of the marriage. She also prayed to be granted costs of the petition.

When the Respondent was served, he duly entered appearance. He filed an answer to the petition and a cross petition for divorce. In the response, the Respondent admitted that he had indeed been separated from the Petitioner as pleaded in the petition for divorce. He stated that although he was not averse to the petition for divorce being granted, he asked the court to grant him joint custody of the child of the marriage. At the hearing of the petition, it was only the Petitioner who gave oral testimony. She reiterated the contents of her petition for divorce. She told the court that her marriage to the Respondent started experiencing difficulties in the year 2000. The difficulties persisted until 2002 when she was separated from the Respondent. She testified that it became untenable for her to live together with the Respondent. Since then, she had been separated from the Respondent. It is for this reason that she asks the court to grant her petition for divorce. She also asks to be granted custody of the child. She was not opposed to the Respondent having reasonable access to the child.

This court has carefully considered the pleadings filed by the parties to these divorce proceedings. From the facts of this case, it is clear that the marriage between the Petitioner and the Respondent has indeed irretrievably broken down with no possibility of salvage. The Petitioner established to the required standard of proof on a balance of probabilities that the matrimonial offence of desertion. The Petitioner and the Respondent have lived separately for more than ten (10) years. Neither the Petitioner nor the Respondent seems to have any wish or desire to sustain the marriage. This court therefore has no option but to grant the petition for divorce craved for by the Petitioner.

In the premises therefore, the marriage between the Petitioner and the Respondent which was celebrated on 4th September 1999 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. The Petitioner shall have custody of the child of the marriage. However, the Respondent shall have a reasonable access to the child. This court was informed that the Petitioner and the Respondent had reached an accommodation regarding the type of reasonable access. That is as it should be. If there shall be any differences, the parties herein shall be at liberty to refer the dispute to the Children's Court. There shall be no orders as to costs.

L. KIMARU

JUDGE

DATED, COUNTERSIGNED AND DELIVERED ON 20TH DAY OF JUNE 2013.

W. MUSYOKA

JUDGE