

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 83 OF 2012

BETWEEN

L L G A.....PETITIONER

AND

G H O.....1ST RESPONDENT

D P-S.....2ND RESPONDENT

JUDGEMENT

The petitioner in this matter married the 1st respondent on 9th November 1991 at a civil ceremony conducted at Mombasa. A certificate of marriage serial number (particulars withheld) was issued, copy whereof is attached to the petition. The couple was blessed with one child – A K A.

The petition in this matter was filed on 10th May 2012. The 1st respondent was served with the petition and notice to appear on 13th June 2012, he accepted service by signing the papers to acknowledge receipt. He did not appear nor file answer or cross-petition to the petition. The petitioner has named a co-respondent, the 2nd respondent herein. She was served on 19th June 2012. There are affidavits of service in respect of the service in both cases. Consequently the Deputy Registrar certified the matter to proceed as an undefended cause.

In the petition, the petitioner alleges that the 1st respondent has committed adultery and has treated her with cruelty. She avers that 1st respondent had an adulterous relationship with the 2nd respondent, and the two have a child together, something which the 1st respondent has acknowledged . On cruelty, she pleads that that she has discovered many love letters exchanged between the 1st respondent and many of his women friends. She also cites the 1st respondent's many adulterous relations as evidence of cruelty. She elaborated on the said allegations of adultery when she testified orally in court on 11th April 2013.

In the absence of an appearance by the respondents, the petitioner's allegations are uncontroverted. Even the evidence presented orally in court is also uncontroverted. It would appear that the marriage between the parties has irretrievably broken down. It would appear to me that there has been no collusion between the petitioner and the 1st respondent to bring these proceedings. There is also no evidence that the petitioner has condoned the cruelty meted on her.

I find that the petitioner has established her case to the required standard. I will consequently make the following orders:

1. The marriage celebrated between the petitioner and respondent on 9th November 1991 is hereby dissolved;
2. Joint custody of the one issue of the marriage is granted to the parties, with the petitioner having physical custody;
3. On access to the child and her maintenance, the parties are at liberty to apply to the Children's Court;
4. Decree *nisi* shall issue forthwith, to be made absolute after thirty (30) days;

5. That there will be no orders as to costs.

SIGNED DATED and DELIVERED in open court this **15th** day of **August, 2013.**

W.M. MUSYOKA

JUDGE