

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

MATRIMONIAL CAUSE NO. 18 OF 2013

L N.....PETITIONER

VERSUS

W C.....RESPONDENT

JUDGMENT

By this petition dated 20th March, 2013 the petitioner **L N** seeks the following orders:

“(a) That the said marriage be dissolved.

(b) That the respondent be condemned to pay the costs of this petition.

(c) Any other or further relief this Honourable court may deem fit and just to grant.”

The respondent **W C** despite having been duly served with the petition chose not to enter appearance nor to file a response to the petition. The matter therefore proceeded as an undefended cause.

The petitioner in her evidence told the court that she met and befriended the respondent, a Belgian national who lived in Mtwapa in Kenya. The two solemnized their marriage at the Registrar’s Office in Mombasa on 6th January, 2009. She produces the certified copy of their marriage certificate serial No. [Particulars withheld] **Pexb1** as proof of this fact. The couple then cohabited as man and wife in Mtwapa. However, the petitioner states that their union was not a happy one as the respondent was cruel towards her by neglecting to provide for and to maintain her as a husband. In addition the respondent was adulterous and brought several different women into their matrimonial home. In December, 2009 barely twelve (12) months after their marriage, the respondent chased her away from the home. The two have not cohabited since then.

The grounds upon which a divorce may be granted in Kenya are contained in section 8 of the Matrimonial Causes Act Cap 152 Laws of Kenya. Among the grounds contained therein are ‘*cruelty*’ and ‘*desertion*’. As stated earlier the respondent was properly served with the petition in this case, vide the affidavit of service filed in court on 4th April, 2013. For reasons best known to himself the respondent opted not to put in appearance and not to defend the petition. As such the averments made by the petitioner remain uncontroverted. Failure to reasonably provide for a spouse and engagement in adultery both amount to matrimonial offences.

The respondent’s act of chasing the petitioner out of the matrimonial home amounted to cruelty. A marriage cannot be sustained where parties live apart. I am satisfied that sufficient grounds have been established in support of this petition. I do hereby allow the petition. Decree nisi to issue to be made absolute within four (4) months of today’s date. I make no order on costs.

Dated and delivered in Mombasa this 5th day of August, 2013.

M. ODERO

JUDGE

In the presence of:

Mr. Nyawinda h/b Mr. Ogetto for Petitioner

Court Clerk Mutisya