

REPUBLIC OF KENYA

COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO.98 OF 2011

R.O.O.....PETITIONER

VERSUS

I.G.O.....RESPONDENT

J U D G M E N T

The Petitioner and the Respondent were married on 20th July 1999. The marriage was celebrated at the District Commissioner’s Office, Kisii. After the marriage, the couple cohabited together as husband and wife in their matrimonial home at *[particulars withheld]* in Nyamira District. The marriage was blessed with two (2) issues, both daughters now aged 17 and 15 years respectively. According to the Petitioner, the marriage has not been a happy one. He accuses the Respondent of cruelty. He has set out the particulars of cruelty in his petition. He avers that in December 2010, the Petitioner deserted from the matrimonial home. It is the Petitioner’s case that his marriage to the Respondent had irretrievably broken down with no possibility of salvage. He therefore asks the court to grant his petition for divorce. He further stated that the issues of maintenance and custody of the children of the marriage has already been addressed by the Children’s Court sitting at Kisii.

Upon being served with the petition for divorce, the Respondent duly entered appearance and filed an answer to the petition. She further cross petitioned for divorce. She denied the allegations made by the Petitioner in his petition for divorce. She averred that her difference with the Petitioner was occasioned by the fact that the Petitioner relocated to the United States of America. She further stated that the petitioner had started an adulterous relationship with a white woman. The Respondent accuses the Petitioner of committing the matrimonial offences of adultery, cruelty and desertion. She sets out the particulars of the said offences in her cross petition for divorce. She is of the opinion that her marriage to the Petitioner had irretrievably broken down with no possibility of salvage. Apart from asking for court to dissolve the marriage, the Respondent urged the court to order the Petitioner to provide her with adequate and consistent maintenance.

At the hearing of the petition, the parties agreed that the Petitioner testifies in the petition. In his oral evidence, the Petitioner essentially reiterated the contents of the petition for divorce. This court carefully read the pleadings filed by the parties in this petition for divorce. It has also considered the evidence adduced by the Petitioner in support of his petition for divorce. It was clear to this court that the marriage between the Petitioner and the Respondent had indeed irretrievably broken down. There are two factors that can be attributed for this breakdown. The first factor is the physical distance that was created between the Petitioner and the Respondent. The Petitioner made the decision to relocate the United States of America for employment purposes. However, he made the decision to leave behind his family.

According to the cross petition, the Respondent averred that this relocation was akin to the family being abandoned. It is this distance that sowed the seeds of discord in the marital relationship of the Petitioner and the Respondent. There was communication breakdown which was not resolved before the said relationship headed south. The Petitioner and the Respondent accuse each other of committing adultery. While this court was not persuaded by the evidence placed on record to support the allegations of adultery, it was clear to the court that the Petitioner and the Respondent had lost trust for each other. Once trust was lost, it was only a matter of time before the marriage was doomed.

In the premises therefore, this court formed the opinion that the marriage between the Petitioner and the Respondent is of such a state that there is no possibility of reconciliation. This court will grant the petition for divorce as a result of which the marriage celebrated between the Petitioner and the Respondent on 20th July 1999 at the District Commissioner's office, Kisii 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. There shall be no orders as to cost. The Petitioner and the Respondent are hereby ordered to agree on the maintenance to be paid to the Respondent within fourteen (14) days of today's date or in default the Respondent shall be at liberty to file an appropriate application before this court to be provided with such maintenance. It is so ordered.

DATED AT NAIROBI THIS 27TH DAY OF SEPTEMBER 2013

L. KIMARU

JUDGE