

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO.18 OF 2008

J O O.....PETITIONER

VERSUS

B C.....RESPONDENT

J U D G M E N T

The Petitioner and the Respondent were married on 30th April 1990 at the District Commissioner’s Office in Kapenguria, West Pokot County. The marriage has been blessed with three (3) children, M O, born on 28th March 1993, B A born on 28th November 1994 and E O (deceased) born on 20th July 1999. The remaining children are now adults. According to the Petitioner, the Respondent had since the celebration of the marriage committed adultery. He further accuses the Respondent of committing the matrimonial offence of desertion. In the particulars set out in the petition for divorce, the Petitioner averred that the Respondent had engaged in extra marital affairs during the period of their marriage. He stated that the Respondent deserted their matrimonial home in Kitale in July, 2000 and has been staying in Kisumu. Since then, the Petitioner and the Respondent have been separated. The Petitioner averred that in April, 2004 the Respondent abandoned the children in Nairobi. It is on account of the above matrimonial offences that the Petitioner is of the view that his marriage to the Respondent had irretrievably broken down with no possibility of salvage. He therefore urged the court to dissolve the marriage and make a further order directing that he (the Petitioner) have custody and care of the children of the marriage.

When the Respondent was served, she duly entered appearance and filed answer to the petition. She denied the allegations made in the petition for divorce that she had committed acts of adultery. She however admitted that she had indeed been separated from the Petitioner as pleaded in the petition for divorce. She averred that it was the Petitioner who has been cruel to her and had been in adulterous liaisons during the subsistence of their marriage. She averred that the Petitioner neglected the issues of the marriage having left them in Nairobi while he worked in Moyale. It is for these reasons that she asks the court to dismiss the petition for divorce with costs and that she be granted custody of the children.

During the hearing of the petition, this court heard oral evidence adduced by both the Petitioner and the Respondent. This court has carefully considered the said evidence together with the pleadings filed by the parties herein in support of their respective opposing positions. What emerged from the evidence is that although the marriage between the Petitioner and the Respondent was a tumultuous one, the Petitioner and the Respondent tolerated each other until July 2000 when they separated. After evaluating the evidence, this court formed the opinion that the separation of more than twelve (12) years is proof that indeed the marriage between the Petitioner and the Respondent has irretrievably broken down with no possibility of salvage. There matrimonial offence of desertion was established. Although the Respondent expressed the intention that she would still be interested to give the marriage a chance, the evidence adduced by the petitioner herein is to the contrary. If there was to be reconciliation, then, the same should have been attempted in the twelve (12) years that the parties herein have been separated. This court will grant the petition for divorce on the ground of desertion. The children are now adults. They are liberty to stay with either the Petitioner or the Respondent.

In the premises therefore, the marriage celebrated between the Petitioner and the Respondent on 30th April 1990 at the Registrar’s office in Kapenguria 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. As regard the issue of maintenance of the respondent, the petitioner and the respondent should

agree on what maintenance should be paid to the respondent within thirty (30) days of today's date or in default thereof either party shall be at liberty to move the court. There shall be no orders as to costs.

DATED AT NAIROBI THIS 31ST DAY OF OCTOBER 2013

L. KIMARU

JUDGE