



REPUBLIC OF KENYA

COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO.156 OF 2012

E A M..... PETITIONER

VERSUS

J B M *alias* D M.....RESPONDENT

J U D G M E N T

The Petitioner and the Respondent started cohabiting together as husband and wife in the year 2004. They formalized their marriage on 17<sup>th</sup> March, 2008 when they were married at the District Commissioner's Office in Kuria District. The marriage was celebrated under the **Marriage Act**. The marriage was blessed with one (1) issue, a son, born in 2006. According to the Petitioner, since the celebration of the said marriage, the Respondent had treated her with cruelty. In particular, she stated that in 2011, the Respondent falsely accused her of adultery. He made this allegation to her employer in an attempt to have her dismissed from employment. She accused the Respondent of being violent and on several occasions threatening her. She further accused the Respondent of committing adultery with various women whom she particularized in her petition for divorce. According to the Petitioner, her marriage to the Respondent had irretrievably broken down with no possibility of salvage. She therefore urged the court to grant her petition for divorce. She also asked the court to grant her custody of the child of the marriage.

The Respondent was served with the notice of appearance together with a copy of the petition for divorce. He did not enter appearance. Neither did he file any papers in answer to the petition for divorce. The Deputy Registrar of this court was satisfied that the Respondent was properly served. She issued a certificate certifying this cause as suitable to be disposed of by this court as an undefended divorce cause.

At the hearing of the petition, this court heard oral evidence adduced by the Petitioner. She testified that the Respondent is currently living with another woman. They have been blessed with a five (5) month old child. She stated that the Respondent also had another child with another woman whom he got during the subsistence of their marriage. The Petitioner told the court that the Respondent had engaged in an adulterous relationship with the Petitioner's sister. When she confronted him about the relationship, the Respondent assaulted her as a result of which she was admitted to a hospital for two days. She stated that she had been separated from the Respondent since December 2010.

From the evidence adduced, it was clear that the marriage between the Petitioner and the Respondent has indeed irretrievably broken down with no possibility of salvage. The accusations of cruelty and infidelity are sufficient proof that the marital relationship between the Petitioner and the Respondent has deteriorated to the extent that it can no longer be sustained. The Petitioner and the Respondent are no longer living together. They have been separated for more than three (3) years. This court formed the view that indeed the matrimonial offence of cruelty and adultery had been proved to the required standard of proof on a balance of probabilities. This court will grant petition for divorce.

In the premises therefore, the marriage solemnized at the District Commissioner's Office, Kuria District on 17<sup>th</sup> March 2008 between the Petitioner and the Respondent is hereby dissolved. Decree nisi dissolving the said marriage is hereby issued. The decree nisi shall be made absolute three (3) months from the date of this judgment. The Petitioner shall have custody of the child of the marriage. There shall be no orders as to costs.

**DATED AT NAIROBI THIS 22<sup>ND</sup> DAY OF NOVEMBER 2013**

**L. KIMARU**

**JUDGE**