

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 66 OF 2013

N SPETITIONER

VERSUS

E C WRESPONDENT

J U D G M E N T

In the petition filed in court on 2nd April 2013, the Petitioner sought orders from the court to be divorced from the Respondent. According to the said petition, the Petitioner was married to the Respondent on 3rd June 2008 at the Registrar's Office in Nairobi. The marriage was blessed with one issue born on 19th March 2009. The Petitioner is a Japanese citizen residing in Kenya while the Respondent is a Kenyan. According to the Petitioner, she cohabited with the Respondent both in Kenya and Japan. The Petitioner stated that the Respondent had since the celebration of the said marriage treated her with cruelty. She set out the particulars of cruelty in paragraph 12 of the petition. In summary, she states that the Respondent had on several occasions spent several days and nights away from the matrimonial home without informing her. She stated that the Respondent had failed to provide for her and the issue of the marriage. He accused the Respondent of being an alcoholic and spending the family finances to the detriment of the family. The Petitioner states that in January 2011 while in Japan she petitioned the family court in Japan to be divorced from the Respondent. The court declared the marriage between the Petitioner and the Respondent as irretrievably broken down thus granted the Petitioner the divorce on 1st January 2011. The Petitioner and the Respondent reconciled and moved back to Kenya in August 2011. They continued living together as husband and wife until January 2012 when the Petitioner left the matrimonial home. The Petitioner is of the view that her marriage to the Respondent had irretrievably broken down with no possibility of salvage. She urged the court to grant her petition for divorce.

Although the Respondent was served with the petition for divorce, the Respondent did not enter appearance. Neither did he file any papers in opposition to the petition. The Deputy Registrar of this Court issued a certificate certifying that the proceedings herein continues as undefended divorce cause. At the hearing of the petition, this court heard oral evidence adduced by the Petitioner. In essence, the Petitioner reiterated the contents of her petition for divorce. She testified that she separated from the Respondent because he was absent from the matrimonial home on most evenings. The Petitioner stated that the Respondent is an alcoholic and could not provide for the family. She testified that she had singlehandedly been forced to provide for the family. This situation had led her to suffer psychological stress. The Petitioner testified that while in Japan, she petitioned for divorce and the same was granted. They later reconciled but the Respondent's alcoholism had wrecked the relationship. The evidence adduced by the Petitioner was uncontroverted. This court has carefully considered the facts of this case. It was clear to this court that the marriage between the Petitioner and the Respondent had irretrievably broken down that it is incapable of being salvaged. The particulars of cruelty narrated by the Petitioner, taken in totality, established to the required standard of proof on a balance of probabilities the matrimonial ground for divorce of cruelty. It was clear that the marital relationship between the Petitioner and the Respondent had broken down. This court therefore holds that the Petitioner established the ground of cruelty in her petition for divorce.

In the premises therefore, this court will grant the petition for divorce craved for by the Petitioner. The marriage celebrated on 3rd June 2008 at the Registrar's Office, Nairobi 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 thirty (30) days from the date of this judgment. There shall be no orders as to

costs.

DATED AT NAIROBI THIS 22ND DAY OF NOVEMBER, 2013

L. KIMARU

JUDGE