

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO.72 OF 2013

W M K.....PETITIONER

VERSUS

J M N.....RESPONDENT

J U D G M E N T

The Petitioner and the Respondent were married on 14th January 2009 at the Registrar's Office in Nairobi. The marriage was celebrated under the **Marriage Act**. The marriage has been blessed with One (1) child. According to the Petitioner, the marriage has not been a happy one. He accuses the Respondent of committing the matrimonial offence of cruelty. In particular, he averred that the Respondent had constantly denied him his conjugal rights. He complained that the Respondent had been cold and indifferent towards him and had neglected him and the child of the marriage. He accused the Respondent of constantly disappearing from the matrimonial home and failing to undertake her wifely duties. He also accused the Respondent of being a drunkard, morally reckless, irresponsible mother and thereby causing him and her child to suffer acute shame, anxiety, extreme mental, emotional and psychological anguish. For the above reasons, the Petitioner is of the view that his marriage to the Respondent had irretrievably broken down with no possibility of salvage. The Petitioner urged the court to grant his petition for divorce and make a further order directing the Respondent to have custody and care of the minor child of the marriage.

The Respondent was served with the petition for divorce. She did not enter appearance. Neither did she file any papers in opposition to the petition for divorce. The Deputy Registrar of this court issued a certificate certifying this cause as suitable to be heard as an undefended divorce cause. The Petitioner testified during the hearing of the divorce cause. He basically reiterated the contents of the petition for divorce. He stated that his marital differences with the Respondent were irreconcilable and that the Respondent had permanently abandoned her matrimonial home and the child since February, 2013. The Petitioner and the Respondent have since then lived separately. This court was satisfied from the evidence adduced by the Petitioner that indeed his marriage to the Respondent had irretrievably broken down with no possibility of salvage. It was clear from the testimony of the Petitioner that the Respondent no longer showed the Petitioner the respect he deserves as her husband. She was cruel and irresponsible. This court is of the opinion that the Petitioner has made a case to the required standard of proof on a balance of probabilities the matrimonial offence of cruelty.

In the premises therefore, the marriage between the Petitioner and the Respondent that was solemnized on 14th January 2008 at the Registrar's Office Nairobi 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. The issue of the custody and maintenance of the child of the marriage shall be determined by the children's court. There shall be no orders as to costs. It is so ordered.

DATED AT NAIROBI THIS 22ND DAY OF NOVEMBER, 2013

L. KIMARU

JUDGE