

T.W.N..... PETITIONER

VERSUS

S.N.K..... RESPONDENT

JUDGMENT

By a petition dated 12th November, 2010 and filed in Court on 23rd December, 2010, the Petitioner seeks from the Court orders that the marriage between her and the Respondent be dissolved and also prays for costs of the petition. The petition is brought on the grounds of cruelty, desertion, and adultery.

In response to the petition, the Respondent filed an answer and cross-petition for divorce filed in Court on 20th December, 2010.

In her evidence in support of the petition, the Petitioner told the Court that the parties got married under customary law in 1989 and formalized the marriage at the Attorney General's Chambers in 1994. They lived together for 15 years and separated in 2004. They were blessed with 3 children, the first two of whom are now adults. Until they parted in 2004, the Petitioner lived in an abusive marriage. The Respondent used to go and sleep out even before the Petitioner got the first born child. He always would say that he was out on business. Sometime in 1992, she found two letters in the Respondent's coat and in "the letter" was a photograph of a boy, the son of a lady who also said in the letter that she was pregnant with a second child. It was the Petitioner's case that the Respondent had been adulterous who even slept with the house helps. She told the Court that two of the maids had confided in her how he had been sleeping with them while she was away. He was also sleeping with a family friend.

On cruelty, the Petitioner alleged that the Respondent would not allow her to visit anyone, not even her parents, and if she visited anyone, she would be given a thorough beating when she came back. He did this even without seeking any explanation from her. At one time he beat her up when her sisters came to visit and they had to intervene. The following day, he insulted her and chased her away with a metal bar when she asked him if he would go for their child's results. She went for the results but did not come back to the house and instead went to her sister's house. She called the Respondent who said he was not ready to talk to her. She thereupon went to her parent's house. Later they talked and the Petitioner agreed to go back home. He woke her up at 3 o'clock the following morning and told her to leave and go back where she had been until he called her back.

In January, 2005, the Respondent filed a case in the Children's Court seeking upkeep for the children. The Court gave the Respondent liberty to take care of the first born child. However, the Respondent threw the child out of the house after getting married to another woman. Since then, he has been paying school fees for the boy but doesn't know what he eats. The Respondent has also two children with the other woman and the Petitioner has been taking care of them. On account of the above, the Petitioner requests the Court to dissolve this marriage as there are no chances of reconciling. Six years of separation is a long time. She undertakes to take care of her children and does not want any maintenance.

In cross-examination by the Respondent, the Petitioner told the Court that the house helps had since left and so she could not get them. She denied assaulting the Respondent before a Magistrate in Kiambu Court.

After this evidence was given, this matter came to Court on four separate dates, to wit, 1st December, 2011; 2nd February, 2012; 23rd February, 2012 and 8th March, 2012 during which the Petitioner always appeared in person but the Respondent did not attend. His cross-petition, therefore, went unprosecuted. This leaves us with the exclusive evidence of the Petitioner.

The account of cruelty given by the Petitioner and which does not appear to have been shaken in cross-

examination by the Respondent was such as to demonstrate both physical and mental cruelty on the part of the Respondent. That would be an adequate ground for granting divorce. According to the further evidence of the Petitioner, the Respondent still leaves with another woman with whom they have had some children. This is another clear ground of adultery which is sufficient for the grant of a divorce. Finally, the parties have been living asunder for more than six years and the chances of reconciliation after such a long period are fairly remote.

By reason and wholly in consequence of these findings, I find that the marriage herein has irretrievably broken down, and the Petitioner has established that she is entitled to a divorce. It is hereby granted. I accordingly make the following orders –

- 1. That the marriage solemnized in the Registrar's office in Nairobi in January, 1994 between the Petitioner and the Respondent be and is hereby dissolved.***
- 2. Decree nisi to issue.***
- 3. Decree nisi to become absolute after three months on application by either of the parties.***

No order as to costs.

DATED and DELIVERED at NAIROBI this 3rd day of May, 2012.

L. NJAGI
JUDGE