



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**DIVORCE CAUSE NO.23 OF 2010**

**DR. R. S.....PETITIONER**

**VERSUS**

**S. C.O.....RESPONDENT**

**J U D G M E N T**

The petitioner and the respondent were married on 16<sup>th</sup> June 1995 at Bury St.[...]in the county of Suffolk, United Kingdom. After the celebration of the said marriage, the petitioner and the respondent cohabited together as husband and wife in the United Kingdom and in various estates at Nakuru and in Nairobi. The marriage was blessed with one child, born on 24<sup>th</sup> November 2000. According to the petitioner, the respondent had since the celebration of the said marriage, treated him with cruelty. In particular, the petitioner accused the respondent of neglecting her matrimonial duties, being a person of unpredictable tempers and of deliberately being wasteful of the family property and finances. The petitioner averred that the respondent had kept company of a man of questionable character leading the petitioner to suspect that their relationship to be dishonourable. The petitioner explained that the said acts of the respondent had caused him to suffer mental anguish and had seriously affected his wellbeing. The petitioner stated that he had been separated from the respondent from March 2009. The petitioner averred that attempts at reconciliation have been frustrated by the respondent. In the premises therefore, the petitioner urged the court to grant the petition for divorce and dissolve the marriage.

When the respondent was served with petition, she duly entered appearance. She filed an answer to the petition and cross-petition for divorce. She denied the allegations made by the petitioner that she had committed acts of cruelty as pleaded in the petition for divorce. She put the petitioner to strict proof thereof. She averred that other than the child who was born to the marriage, she had two other children from a previous relationship. The respondent accused the petitioner of committing acts of infidelity and of being irresponsible. She stated that the petitioner had failed to provide for the children hence her decision to institute maintenance proceedings before the Children's Court. In her cross-petition, the respondent averred that the petitioner had since the celebration of the marriage treated the respondent with cruelty and had further committed acts of adultery. The respondent accused the petitioner of abandoning his matrimonial obligations hence dooming the marriage. The respondent set out the particulars of cruelty, adultery and abandonment in her petition for divorce. In the said particulars, the respondent stated that the petitioner had refused to recognize or accord respect to the two children of the respondent born from the previous relationship. She stated that the petitioner was a man of ungovernable temper who had been cruel to both the respondent and the two children by physically assaulting them. The respondent was of the view that in light of the above complaints, her marriage to the petitioner had irretrievably broken down. She craved for orders of dissolution of the marriage. She further prayed for orders to be paid

maintenance and costs of the cross-petition.

At the hearing of the petition, this court heard oral evidence adduced by the petitioner and the respondent. From the said evidence, it was clear to the court that indeed the marriage between the petitioner and the respondent had irretrievably broken down. The petitioner and the respondent have been separated since 13<sup>th</sup> February 2009. From the pleadings filed in court, it was clear to the court that the petitioner and the respondent gave up on their marriage long time ago. They did not have the will, neither did they have the patience to sustain the marriage. The petitioner and the respondent lost respect for each other. It was apparent that even if reconciliation was attempted (if it was ever attempted at all), it would be in vain. This is because the petitioner and the respondent are so far apart emotionally that their differences cannot be bridged. This court therefore holds that the ground of cruelty and desertion was proved to the required standard of proof on a balance of probabilities.

In the premises therefore, the marriage solemnized in the United Kingdom between the petitioner and the respondent on 16<sup>th</sup> June 1995 is hereby dissolved. *Decree nisi* dissolving the said marriage is hereby issued. The same shall be made absolute thirty (30) days from the date of this judgment. The petitioner and the respondent informed the court that the issue regarding the custody and maintenance of the child of the marriage has been dealt with by the Children's Court. This court will not make any comments in that regard. Each party shall bear its own costs.

**DATED AT NAIROBI THIS 18<sup>TH</sup> DAY OF MARCH, 2011**

**L. KIMARU**

**JUDGE**