

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

DIVORCE CAUSE NO.48 OF 2010

F.W.K.....PETITIONER

VERSUS

S.N.G.....RESPONDENT

J U D G M E N T

The petitioner and the respondent were on the 17th October 2003 married at the Registrar's office in Nairobi. They were married under the **Marriage Act**. Soon after their marriage, the petitioner and the respondent cohabited together as husband and wife in various estates within the city of Nairobi. The marriage was blessed with one issue, a son, born on 19th December 2003. According to the petitioner, the respondent, without any justification or reason, deserted from the matrimonial home in December 2007. Since then, the respondent had not returned to the matrimonial home. The petitioner accused the respondent of treating her with cruelty, particulars of which she set out in her petition for divorce. She complained that the respondent had subjected her to mental and emotional cruelty by neglecting, refusing and failing to show her love and affection. She stated that the respondent was irresponsible and had on numerous occasions failed to provide reasonable maintenance to the petitioner. The petitioner averred that the respondent had committed adultery with two women whom she named in the petition for divorce during the subsistence of the marriage. It was on account of the above behaviour by the respondent, that the petitioner stated that she suffered anxiety, stress and humiliation to an extent that her health was adversely affected. The petitioner therefore urged the court to grant her petition for divorce.

The respondent was served with a copy of the petition of divorce. He duly entered appearance. He filed an answer to the petition. He also cross-petitioned for divorce. In his answer, he denied the allegations made by the petitioner that he had treated the petitioner with cruelty or that he had committed adultery. He denied deserting from the matrimonial home. Instead, in his cross-petition, he accused the petitioner of deserting from the matrimonial home in December 2007. He further accused the petitioner of treating him with cruelty. In particular, he complained that the respondent had assaulted him on several occasions, and further that the respondent had regularly denied him his conjugal rights. He accused the respondent of making unilateral decisions concerning the welfare of the family without having the courtesy of consulting with him. He therefore urged the court to dismiss the petition for divorce and grant his cross-petition for divorce.

At the hearing of the petition, this court heard oral evidence adduced by the petitioner and the respondent. The issue for determination by this court is whether a case has been established for this court to grant the divorce sought by both the petitioner and the respondent. It was clear from the evidence adduced that the petitioner and the respondent had personalities which made living as a married couple impossible. It was apparent that there was failure of communication between the petitioner and the respondent. The petitioner and the respondent were unable to agree on the best way by which they were to relate as a family. This disagreement led to constant quarrels, lack of trust and suspicion. In some instances, it resulted in physical violence. The couple finally decided to call it a day. They separated on 20th December 2007. Since then, the petitioner and the respondent have not resumed cohabitation. Efforts at reconciliation appear to have borne no fruit. In the premises therefore, this court holds that the petitioner and the respondent, established to the required standard of proof, the ground of desertion. This court further holds that the marriage between the petitioner and the respondent has irretrievably broken

down with no chance of being salvaged.

In the premises therefore, this court will grant the petition for divorce. The marriage solemnized between the petitioner and the respondent on 17th October 2003 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 1ST DAY OF APRIL, 2011

**L. KIMARU
JUDGE**