

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

DIVORCE CAUSE NO. 134 OF 2009

B E T W E E N

H.K.O PETITIONER

V E R S U S

P.M.N..... RESPONDENT

J U D G M E N T

The petitioner and the respondent were on 6th September 2005 married at the Registrar's office in Nairobi. The marriage was celebrated under the **Marriage Act**. After the said marriage, the petitioner claims that the respondent refused to cohabit with her in their new capacity as husband and wife. She averred that soon after celebration of the said marriage, the respondent deserted her thus causing her to suffer anxiety, distress and mental agony. The marriage was not blessed with any children. The petitioner accused the respondent of cruelty. In particular, she complained that the respondent failed to materially provide for her upkeep, and without any reasonable excuse, failed to provide the petitioner with her conjugal rights. The petitioner stated that the respondent denied her emotional support and affection that is ordinarily expected from a husband to a wife. She averred that as a result of the respondent's desertion and cruelty, she suffered depression and psychological torture. It is for the above reasons that the petitioner formed the view that her marriage to the respondent had irretrievably broken down with no chance of salvage. The petitioner urged the court to grant her petition for divorce.

The respondent was served with a copy of the petition for divorce. He duly entered appearance but did not file any papers in answer to the petition. This court proceeded to hear the divorce cause as an undefended case. At the hearing of the petition, the petitioner basically reiterated the contents of the petition. She testified that the respondent abandoned her seven (7) months after their marriage. After evaluating the said evidence, it was clear to the court that the petitioner established the matrimonial grounds of desertion and cruelty to the required standard of proof on a balance of probabilities. Since the petitioner and respondent were separated, after the respondent deserted from the matrimonial home, nearly five years have elapsed. If reconciliation was to bear any fruit, the petitioner and the respondent could have by this time attempted reconciliation. It was apparent to the court that the respondent is not interested in the marriage. This court should therefore free the petitioner from a marriage that has clearly failed. This court agrees with the petitioner that her marriage to the respondent has indeed irretrievably broken down with no chance of repair.

In the premises therefore, the marriage celebrated between the petitioner and the respondent on 6th September 2005 at the Registrar's office in 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. There shall be no orders as to costs.

DATED AT NAIROBI THIS 20TH DAY OF MAY, 2011

L. KIMARU

J U D G E